



Agenda of Regular Meeting

The Board of Trustees McAllen Independent School District

A Regular Meeting of the Board of Trustees of the McAllen Independent School District will be held Monday, May 8, 2023, beginning at 5:00 PM Dr. Ricardo Chapa Board Room/Administration Building of the McAllen Independent School District, 2000 North 23rd Street, McAllen, TX 78501.

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

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

1. **CALL MEETING TO ORDER**
2. **INVOCATION**
3. **PLEDGE OF ALLEGIANCE**
4. **PUBLIC COMMENT(S)**
5. **RECOGNITION(S)**
 - A) Recognition of the 2022-2023 McAllen High School Top Ten Graduating Students 8
Item Submitted: Bridgette Vieh, Associate Superintendent for Instructional Leadership
Presenter: Dr. J. A. Gonzalez, Superintendent
 - B) Recognition of the 2022-2023 McAllen Memorial High School Top Ten Graduating Students 9
Item Submitted: Bridgette Vieh, Associate Superintendent for Instructional Leadership
Presenter: Dr. J. A. Gonzalez, Superintendent
 - C) Recognition of the 2022-2023 James "Nikki" Rowe High School Top Ten Graduating Students 10
Item Submitted: Bridgette Vieh, Associate Superintendent for Instructional Leadership
Presenter: Dr. J. A. Gonzalez, Superintendent
 - D) Recognition of the 2022-2023 Achiqve Early College High School Top Ten Graduating Students 11

- Item Submitted: Bridgette Vieh, Associate Superintendent for Instructional Leadership
- Presenter:** Dr. J. A. Gonzalez, Superintendent
- E) Recognition of the 2022-2023 McAllen High School Graduating Class Valedictorian and Salutatorian 12
 Item Submitted: Bridgette Vieh, Associate Superintendent for Instructional Leadership
Presenter: Dr. J. A. Gonzalez, Superintendent
- F) Recognition of the 2022-2023 McAllen Memorial High School Graduating Class Valedictorian and Salutatorian 13
 Item Submitted: Bridgette Vieh, Associate Superintendent for Instructional Leadership
Presenter: Dr. J. A. Gonzalez, Superintendent
- G) Recognition of the 2022-2023 James "Nikki" Rowe High School Graduating Class Valedictorian and Salvadorian 14
 Item Submitted: Bridgette Vieh, Associate Superintendent for Instructional Leadership
Presenter: Dr. J. A. Gonzalez, Superintendent
- H) Recognition of the 2022-2023 Achieve Early College High School Graduating Class Valedictorian and Salutatorian 15
 Item Submitted: Bridgette Vieh, Associate Superintendent for Instructional Leadership
Presenter: Dr. J. A. Gonzalez, Superintendent
- I) Recognition of National Association of Music Merchants Foundation's Naming McAllen ISD One of the "Best Communities for Music Education" for 2023 16
 Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services
Presenter: Dr. J. A. Gonzalez, Superintendent
- J) Recognition of the McAllen Education Foundation Donation for the Study Abroad Program and Uncharted Learning Top Performer Team Award 17
 Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services
Presenter: Dr. J. A. Gonzalez, Superintendent
- K) Recognition of Outgoing Board Member(s)
Presenter: Dr. J. A. Gonzalez, Superintendent
6. **Public Hearing to Discuss the 2022-2023 McAllen Independent School District ESSER Master Plan** 18
 Item Submitted: Adel Felix, Assistant Superintendent for Business Operations
Presenter: Dr. J. A. Gonzalez, Superintendent
7. **RECESS TO CLOSED SESSION: Board of Trustees may go into Closed Session pursuant to Section(s) 551.071, 551.072, 551.074, 551.076, and 551.089 Texas Government Code, to discuss the following:**

- A) Discussion of Human Resources Recommendation(s) for School Year 2023-2024
 - B) Discussion of Human Resources Employee Resignation(s) for School Year 2022-2023
 - C) Discussion of Superintendent's Recommendation Concerning the Renewal of 2022-2023 Employee Contracts of Teachers and Other Professional Personnel for the 2023-2024 School Year - Policy DC (LEGAL)
 - D) Discussion of Superintendent's Recommendation Concerning the Termination of Probationary Contracts of Employees At End of Year - Policy DFAB (LEGAL)
 - E) Discussion Regarding School Safety and Security
 - F) Pending and/or Potential Litigation
 - G) Possible Real Estate Acquisition
8. **RECONVENE IN OPEN SESSION**
9. **ACTION ON ITEM(S) IN CLOSED SESSION**
- A) Discussion and Possible Action of Human Resources Recommendation(s) for School Year 2023-2024 26
 Item Submitted: Todd Miller, Assistant Superintendent Human Resources
Presenter: Dr. J. A. Gonzalez, Superintendent
 - B) Discussion of Human Resources Employee Resignation(s) for School Year 2022-2023 27
 Item Submitted: Todd Miller, Assistant Superintendent Human Resources
Presenter: Dr. J. A. Gonzalez, Superintendent
 - C) Discussion and Possible Action of Superintendent's Recommendation Concerning the Renewal of 2022-2023 Employee Contracts of Teachers and Other Professional Personnel for the 2023-2024 School Year - Policy DC (LEGAL) 28
 Item Submitted: Todd Miller, Assistant Superintendent for Human Resources
Presenter: Dr. J. A. Gonzalez, Superintendent
 - D) Discussion and Possible Action of Superintendent's Recommendation Concerning the Termination of Probationary Contracts of Employees At End of Year - Policy DFAB (LEGAL) 29
 Item Submitted: Todd Miller, Assistant Superintendent for Human Resources
Presenter: Dr. J. A. Gonzalez, Superintendent
 - E) Discussion Regarding School Safety and Security
 - F) Pending and/or Potential Litigation
 - G) Possible Real Estate Acquisition
10. **SUPERINTENDENT'S REPORT(S)** 2023 Teacher of the year Luncheon
Presenter: Dr. J. A. Gonzalez, Superintendent
11. **PROCLAMATION(S)**
12. **DONATION(S)**

13. BOARD MEMBER(S), BOARD COMMITTEE(S) AND DISTRICT REPORT(S)

A) Board Committee Reports

1. Instructional Services Briefing - Chair - Sofia Peña
2. Human Resources Briefing - Chair - Daniel Vela
3. District Operations Briefing - Chair - Conrado Alvarado
4. Business Operations Briefing - Chair - Debbie Crane Aliseda
5. Board Officers Briefing - Tony Forina

B) District Reports

1. Report Regarding the Delinquent Tax Collections for the Period of January 1, 2023 to March 31, 2023 30
Item Submitted: Adel Felix, Assistant Superintendent for Business Operations
Presenter: Dr. J. A. Gonzalez, Superintendent
2. Report Regarding Shrinkbox 36
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services
Presenter: Dr. J. A. Gonzalez, Superintendent
3. Report Regarding Intent to Apply for Fiscal Year 2023 Community Oriented Policing Services School Violence Prevention Program 43
Item Submitted: Adel Felix, Assistant Superintendent for Business Operations
Presenter: Dr. J. A. Gonzalez, Superintendent
4. Report Regarding Intent to Apply for STOP THE BLEED Grant Programs 47
Item Submitted: Adel Felix, Assistant Superintendent for Business Operations
Presenter: Dr. J. A. Gonzalez, Superintendent

14. CONSENT AGENDA ITEMS

- A) Possible Action on Request for Proposal No. 2021-1000R Library Books, eBooks, Textbooks, Audiovisual Materials, and Instructional Reading Materials Discount-from-List (Round 21) 54
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services
Presenter: Dr. J. A. Gonzalez, Superintendent
- B) Possible Action on Request for Proposal No. 2021-1007 Career and Technology Materials, Supplies, Equipment, and Related Services Discount-from-List (Round 20) 56
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services
Presenter: Dr. J. A. Gonzalez, Superintendent
- C) Possible Action on Training Agreement No. 2023-205 Cyberpatriot Summer Camp with South Texas College 58
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

- D) Possible Action on Interlocal Cooperation Contract No. 2024-001 Environmental Science and Aquatic Science with City of McAllen’s Quinta Mazatlan 64
Item Submitted: Bridgette Vieh, Associate Superintendent for Instructional Leadership

Presenter: Dr. J. A. Gonzalez, Superintendent

- E) Possible Action on Second Amendment to Contract No. 2022-194 Park Place Recreation Designs, Inc. 75
Item Submitted: Alejandra Gonzalez, Assistant Superintendent for District Operations

Presenter: Dr. J. A. Gonzalez, Superintendent

15. INSTRUCTIONAL SERVICES, INSTRUCTIONAL LEADERSHIP, HUMAN RESOURCES, DISTRICT OPERATIONS, BUSINESS OPERATIONS, SUPERINTENDENT, AND BOARD OF TRUSTEES ITEMS

A) Instructional Services Item(s) (Dr. Rosalba De Hoyos) Instructional Leadership Item(s) (Bridgette Vieh)

1. Discussion and Possible Action on the Instructional Material Allotment (“IMA”) and Texas Essential Knowledge and Skills (“TEKS”) Certification Form 147
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

2. Discussion and Possible Action on Staff Travel to The International Baccalaureate IB Global Inclusion Conference in Toronto, Canada 172
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

3. Discussion and Possible Action on Staff Travel to present at the International Baccalaureate IB Global Conference in Dublin, Ireland 173
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

4. Discussion and Possible Action on Memorandum of Understanding No. 2024-006 Hidalgo County Head Start Program 174
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

5. Discussion and Possible Action on Memorandum of Understanding No. 2024-008 Hidalgo County Head Start Program for Special Education 187
Item Submitted: Dr. Rosalba De Hoyos, Assistant Superintendent for Instructional Services

Presenter: Dr. J. A. Gonzalez, Superintendent

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

1. Review and Possible Action Regarding the Resolution of the Board of Trustees of the McAllen Independent School District Regarding Delegation of Authority During Severe Thunderstorm Damage on April 28, 2023
Item Submitted: Todd Miller, Assistant Superintendent Human Resources
Presenter: Dr. J. A. Gonzalez, Superintendent

C) District Operations Item(s) (Alejandra Gonzalez)

1. Discussion and Possible Action on Contract No. 2023-202 Noble Texas Builders, LLC through Request for Proposal (RFP) 2023-1008 Construction Manager at Risk Services McAllen High School, McAllen Memorial High School and James “Nikki” Rowe High School New Mariachi and Black Box Buildings
Item Submitted: Alejandra Gonzalez, Assistant Superintendent for District Operations
Presenter: Dr. J. A. Gonzalez, Superintendent

D) Business Operations Item(s) (Adel Felix)

1. Discussion and Possible Action of the McAllen Independent School District April Budget Amendment for Fiscal Year Beginning July 1, 2022 and Ending June 30, 2023
Item Submitted: Adel Felix, Assistant Superintendent for Business Operations
Presenter: Dr. J. A. Gonzalez, Superintendent

E) Superintendent Item(s)

1. Discussion and Possible Action of Travel for Superintendent 345

F) Board of Trustees Item(s)

1. Discussion and Possible Action of Board of Education Meeting Minutes 347
 - a) Special Board Meeting April 13, 2023
 - b) Regular Board Meeting April 24, 2023
2. Update to Annual Announcement of Continuing Education of Board Members Update 348

16. SCHEDULE OF FUTURE MEETINGS

- A) Special Board Meeting - May 15, 2023 - 5:30 P.M. Auditorium/McAllen High School
- B) Special Board Meeting - May 17, 2023 - 5:30 P.M. - Auditorium/McAllen High School
- C) Regular Board Meeting - May 22, 2023 - 5:00 P.M. Dr. Ricardo Chapa Board Room/Administration Building
- D) Board Workshop- May 24, 2023 - 5:30 P.M. Dr. Ricardo Chapa Board Room/Administration Building

17. CLOSED SESSION: The Board of Trustees may reconvene in Closed Session for further discussion regarding the agenda item(s) listed.

18. OPEN SESSION: The Board of Trustees may reconvene into Open Session for discussion regarding the agenda item(s) listed.

19. ADJOURNMENT

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

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

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

*The notice for this meeting was posted in compliance with the Texas Open Meeting Act on May 5, 2023 at 4:45 P.M.
Natalia Goza
on behalf of the Board of Trustees*

**BOARD RECOGNITION FORM
McALLEN INDEPENDENT SCHOOL DISTRICT**

Meeting Date (Recommended): May 8, 2023

Title of Recognition: Recognition of the 2022-2023 McAllen High School Top Ten Graduating Students

Person(s) Being Recognized (include names & description i.e student at X High School):

Alberto Villarreal-Canales
Jake Fallek
Anakaren Garza
Jorge Cavazos-Cuellar
Irasema Basurto
Natalie Liguez
Jeffrey DeGroot
Jade Mata
Gerardo Zermeno Simon
Nyles Dos Santos De Oliveira

Reason for Recognition:

Presented today are the Class of 2023 Top Ten students from McAllen High School. McAllen ISD is very proud of these students for their hard work and dedication to academics. They have spent countless hours applying what they have learned throughout their McAllen ISD school years to get to this point. We know these students will be successful in anything they set out to accomplish. Congratulations to these students and their families. We wish you the best of luck in all of your future endeavors!

Please note any items that will be presented:

Photographer Requested: Yes

AV needs:

Name of Presenter: Bridgette Vieh
Phone: 956-618-6053
eMail: bridgette.vieh@mcallenisd.net

Approved for Recognition: _____



Superintendent

May 4, 2023

PROCEDURE FOR BOARD RECOGNITION

1. Fill out "Board Recognition Form" in its entirety at least 12 working days before the recommended date for presentation.
2. Submit completed form to Community Information Office with a cc to immediate supervisor and the Secretary to the Board of Trustees

Following the superintendent's executive team approval, confirmation of recognitions (year-at-a-glance) will be done via e-mail each week. Honorees are instructed to report to the Community Information office at 5:15 p.m. on their designated Board Meeting date.

**BOARD RECOGNITION FORM
McALLEN INDEPENDENT SCHOOL DISTRICT**

Meeting Date (Recommended): May 8, 2023

Title of Recognition:

Photographer Requested: Yes

AV needs:

Approved for Recognition: _____



Superintendent

May 3, 2023

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McALLEN INDEPENDENT SCHOOL DISTRICT

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AV needs:

Approved for Recognition: _____



Superintendent May 3, 2023

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McALLEN INDEPENDENT SCHOOL DISTRICT**

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Photographer Requested: Yes

AV needs:

Approved for Recognition: _____



Superintendent

May 3, 2023

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**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

SUBMITTED BY: *Laura Williams*
Laura Williams (May 4, 2023 13:46 CDT)

SUPERVISOR: *Adelino*

Approved for presentation to the Board of Education:

J. Alexander

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Superintendent of Schools



**REPORT REGARDING UPDATES TO ESSER I/II/III
2022-2023 MASTER PLAN**

**BOARD MEETING
MAY 8, 2023**

ESSER funds provides the District the opportunity to be able to invest in the future of our students by allowing us to offset our local operating costs to fund these projects. These projects align with McAllen ISD's Strategic Plan which includes the following goals and strategies:

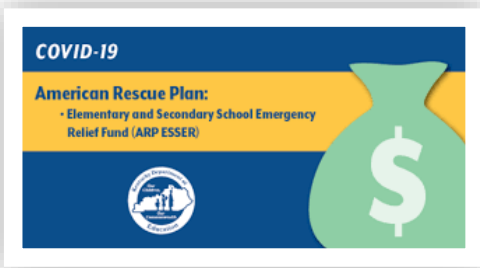
Goals:

1. Student Achievement/Student Focus
2. People Development
3. Facility Priorities
4. Financial Priorities

Strategies:

1. Branding
2. Attract/Retain High Quality Staff
3. Engaging Learning Environment
4. Rigorous/ World Class Standards Customized for Every Learner
5. Partnerships with Business/Civic/ Education Organizations
6. Future-Ready Students
7. Financial Priorities

Highlights of the ESSER I, II & III Grants



The American Rescue Plan was signed into law in March 2021 with \$122 billion in Elementary and Secondary School Emergency Relief (ESSER) funds for school districts across the country becoming the single largest investment in federal elementary and secondary education in the nation's history.

The Coronavirus Response & Relief Supplemental Appropriations Act (CRRSA – ESSER II) was signed into law on December 27, 2020, providing an additional \$54.3 billion in Elementary and Secondary School Emergency Relief fund (ESSER II Fund).

Key Dates

- Pre-award March 13, 2020 – September 30, 2024 (with a carryover) (ESSER III)
- Pre-award March 13, 2020 – September 30, 2023 (with a carryover) (ESSER II)
- Pre-award March 13, 2020 – September 30, 2022 (with a carryover) (ESSER I)
- ESSER III 2/3 application submitted Thursday, June 24, 2021. Notice of Grant Award (NOGA) was received Friday, July 16, 2021.
- Prior-Approval Requests Approved: Black Box Theaters, Kitchen Remodel, Marquee replacement, HVAC, Science & Technology Center, and Staff Development Expansion
- ESSER II application submitted Thursday, July 29, 2021. Notice of Grant Award (NOGA) was received Monday, September 13, 2021.
- ESSER III 1/3 additional allocation \$29,161.00 - amended our application by January 28, 2022.
- Safe Return to In-Person Instruction and Continuity of Services Plan (RIPICS) & Use of Funds Plan have to be updated a minimum of every six months with stakeholder input

Purpose of ESSER I/II/III

- ▶ To safely reopen and sustain the safe operation of schools.
- ▶ To address the impact the coronavirus pandemic has had on students.
- ▶ To prevent, prepare for, and respond to the coronavirus

Public Input Effort

- ▶ McAllen ISD launched a comprehensive stakeholder engagement process to gather feedback on how to spend these additional federal dollars to address unfinished learning and COVID-19 recovery and safe return to in-person instruction and continuity of services.

ESSER II & III Written Plans

<https://www.mcallenisd.org/page/esser-iii>

ESSER III Information

The American Rescue Plan signed into law in March included \$122 billion in Elementary and Secondary School Emergency Relief (ESSER) funds for school districts across the country, which is the single largest investment in federal elementary and secondary education in the nation's history. McAllen ISD will apply to receive some of that additional funding.

McAllen ISD is launching a comprehensive stakeholder engagement process to help determine how it should potentially spend additional federal dollars to address unfinished learning and COVID-19 recovery.

ESSER III Invitation to Public Comment



RETURN TO TRADITIONAL SCHOOL 2021-2022

Please complete the Return to Traditional School 2021-2022 survey. Click here to complete the survey.



REGRESO A ESCUELA TRADICIONAL 2021-2022

Completa la encuesta Regreso a la escuela tradicional 2021-2022. Haz clic aquí para completar la encuesta.



ESSER MASTER PLAN

Take this survey

All parents, district employees, students and community members are urged to [complete the survey](#) to help the district determine what to prioritize with the potential ESSER funds.

TAKE THE SURVEY



ESSER PLAN MAESTRO

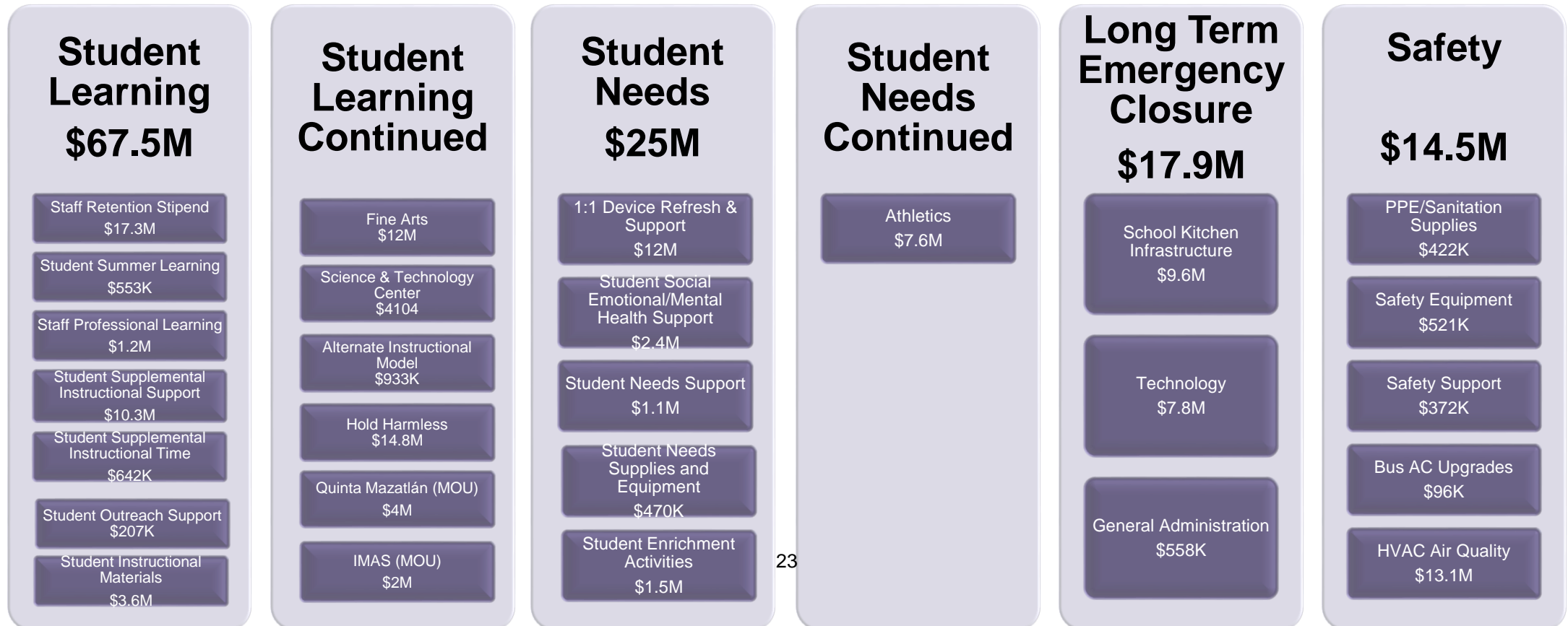
Completa esta encuesta

Se insta a todos los padres, empleados del distrito, estudiantes y miembros de la comunidad a completar una encuesta para ayudar al distrito a determinar qué priorizar con los posibles fondos de ESSER.

COMPLETA ESTA ENCUESTA

ESSER II & III Proposed Allocations

As of May 4, 2023 7:55 am



Pending Projects

- ▶ Black boxes/Mariachi Center (In Design phase)
- ▶ UTRGV – McAllen ISD Collegiate Academy (In Construction)
- ▶ NOC (In Design phase)
- ▶ School Kitchen Infrastructure
 - ▶ Currently working on: Brown, De Leon, Garza, Gonzalez, Jackson, Rayburn, Roosevelt, Wilson
 - ▶ Pending confirmation of funding - potential projects: Alvarez, Castaneda, Escandon, Fields, Hendricks, Houston, Lamar, McAllen HS, McAuliffe, Milam, Perez, Rowe, Sanchez, Seguin, Thigpen-Zavala, Travis
- ▶ HVAC Upgrades
 - ▶ Currently working on: Alvarez, Cathey, Castaneda, DeLeon, Escandon, Fields, Fossum, Garza, Gonzalez, Hendricks, Houston, Jackson, Lamar, McAuliffe, Memorial, Milam, Morris, Perez, Rayburn, Roosevelt, Rowe, Sanchez, Seguin, Thigpen-Zavala, Travis, Wilson, 998

THANK YOU

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

SUBJECT: Discussion and Possible Action on Human Resources Recommendation(s) for School Year 2023-2024

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

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

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

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

LEGAL REVIEW: Not Applicable

BUDGETARY CONSIDERATIONS:

Provided with individuals identified under separate cover.

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve Human Resources Recommendation(s) for School Year 2023-2024.

SUBMITTED BY: _____

For further information contact:
Name: Todd Miller
Office: Human Resources (956) 618-6009
eMail: Todd.Miller@mcallenisd.net

SUPERVISOR:  _____

May 3, 2023

Approved for presentation to the Board of Education:



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Superintendent of Schools

May 3, 2023

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

SUBJECT: Discussion of Human Resources Employee Resignation(s) and Retirees for School Year 2022-2023

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

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

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

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

LEGAL REVIEW: Not Applicable

BUDGETARY CONSIDERATIONS: Not Applicable

RECOMMENDED BOARD ACTION:

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

SUBMITTED BY: _____

For further information contact:
Name: Todd Miller
Office: Human Resources (956) 618-6009
eMail: todd.miller@mcallenisd.net

SUPERVISOR:  _____

May 3, 2023

Approved for presentation to the Board of Education:



27

Superintendent of Schools

May 3, 2023

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

SUBJECT: Discussion and Possible Action of Superintendent's Recommendation Concerning the Renewal of 2022-2023 Employee Contracts of Teachers and Other Professional Personnel for the 2023-2024 School Year - Policy DC (LEGAL)

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

As specified in Policy DC (LEGAL), a district shall employ each classroom teacher, principal, librarian, nurse, or school counselor under a probationary contract, a continuing contract, or a term contract. A district is not required to employ a person other than these listed employees under a probationary, continuing, or term contract. Education Code 21.002

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

These recommendations are made based on job performance, program needs, and funding. Additional days are not reflected.

LEGAL REVIEW: Not applicable.

BUDGETARY CONSIDERATIONS: Budgeted

RECOMMENDED BOARD ACTION:

That the Board of Trustees approve the Superintendent's recommendation concerning the renewal of 2022-2023 Employee Contracts of Teachers and Other Professional Personnel for the 2023-2024 School Year.

SUBMITTED BY:  _____

May 3, 2023

For further information contact:

Name: Stan Crouse

Office: Human Resources (956) 618-6009

eMail: Stan.Crouse@mcallsisd.net

SUPERVISOR:  _____

May 3, 2023

Approved for presentation to the Board of Education:



28

Superintendent of Schools

May 3, 2023

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

SUBJECT: Discussion and Possible Action of Superintendent's Recommendation Concerning the Termination of Probationary Contracts of Employees At End of Year - Policy DFAB (LEGAL)

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

A probationary contract employee may be terminated at the end of the contract period if the Board determines that such termination will serve the best interests of the District.

The attached list identifies those probationary teachers that have been recommended for termination of employment at the end of the 2022-2023 contract period by their respective Principals.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The Board shall give the employee notice of its decision to terminate the employment not later than the 10th day before the last day of instruction required under contract. The Board's decision to terminate a probationary employee at the end of a contract period is final and may not be appealed.

LEGAL REVIEW: Not applicable

BUDGETARY CONSIDERATIONS: Not applicable

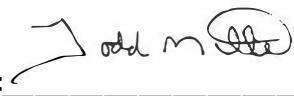
RECOMMENDED BOARD ACTION:

That the Board of Trustee approve the termination of Probationary Contract employee(s) identified, under separate cover at the end of the 2022-2023 contract period.

SUBMITTED BY: 

May 3, 2023

For further information contact:
Name: Stan Crouse
Office: Human Resources (956) 618-6009
eMail: Stan.crouse@mcallenisd.net

SUPERVISOR: 

May 3, 2023

Approved for presentation to the Board of Education:



29 _____
Superintendent of Schools May 3, 2023

McALLEN INDEPENDENT SCHOOL DISTRICT



DELINQUENT TAX COLLECTION REPORT

MAY 08, 2023



1512 SOUTH LONE STAR WAY, EDINBURG, TEXAS 78539 ☎ TEL. (956) 383-4500

LAW OFFICES
OF
LINEBARGER GOGGAN BLAIR & SAMPSON, LLP
ATTORNEYS AT LAW
1512 S. Lone Star Way
EDINBURG, TEXAS 78539

Telephone: (956) 383-4500
Facsimile: (956) 383-7820

May 8, 2023

Mr. Tony Forina, President
Mrs. Debbie Crane-Aliseda, Vice-President
Mr. Marco Suarez, Secretary
Mr. Conrado Alvarado, Trustee
Ms. Sofia M. Peña, Trustee
Mr. Sam Saldivar Jr., Trustee
Mr. Daniel D. Vela, Trustee
Dr. José A. Gonzalez Ed. D, Superintendent
McAllen Independent School District
2000 North 23rd Street
McAllen, Texas 78501

RE: Delinquent Tax Collections for the period of January 01, 2023 through March 31, 2023

Dear Dr. Gonzalez and Board of Trustees:

The Linebarger Goggan Blair & Sampson, LLP Report highlights our delinquent ad valorem tax collection program on behalf of the McAllen Independent School District. Our collection results, as noted herein, continue to be successful for the McAllen Independent School District.

Please know that we truly appreciate the opportunity to represent the McAllen Independent School District on all delinquent ad valorem tax matters. As always, we will continue to provide the McAllen Independent School District with quality representation, consistent results, and an ample experienced staff of attorneys, legal assistants and a certified tax assessor collector dedicated to servicing your account. We are available to address any questions you may have or to discuss any concerns that interest you at your convenience.

Sincerely,



Kelly R. Salazar
Capital Partner



Our delinquent tax collection program for the McAllen Independent School District continues to emphasize two basic premises: to work with individual taxpayers to collect taxes owed to the McAllen Independent School District and to only use the tool of litigation as a final option. We listen and continually adapt to your changing needs to ensure that we are providing the best possible service and deliver customized collection programs that yield the best possible results. The following information is an overview of our collections efforts during this reporting period.

MAILINGS

Our extensive mailing program is designed to advise people who have not paid their delinquent taxes to McAllen Independent School District. During the course of the fiscal year, we send delinquent notices, with varying degrees of intensity to every delinquent taxpayer. The intensity of the notice varies on factors such as: time of year, type of property and the particular needs of the jurisdiction.

2 Demand Mailing – 2,198 Statements Mailed

CONTACTS

Our comprehensive collection services provide a wide scope of exceptional assistance to the McAllen Independent School District and its residents. Equipped with multi-skilled representatives, we create and manage flexible payment plans for taxpayers experiencing any financial hardship.

2,544
Phone Calls

106
Pay Off Requests

272
On-Site Visits

LITIGATION

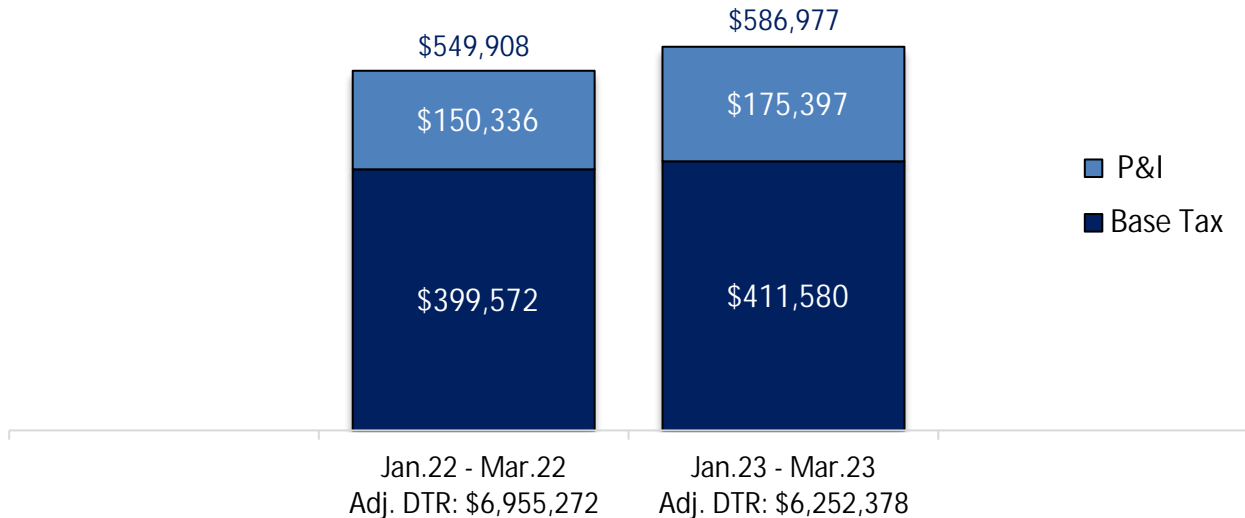
Filing a lawsuit to collect delinquent taxes is used as a final resort; after diligent efforts to contact and work with taxpayers are fully exhausted. Once the decision to file suit has been made, a complete property title search is conducted, the taxable property is further identified and all interested parties, including all lien holders, are identified and served with notice of the lawsuit.

Litigation Activity	Cases	Base, Penalty and Interest
• Filed Lawsuits	52	\$182,880
• Lawsuits Disposed	45	\$228,722
• Judgments Taken	21	\$87,671
• Tax Warrants	13	\$23,200
• Pending Litigation as of 4/2023	348	\$1,581,045



COLLECTIONS

3RD QUARTER COLLECTION COMPARISON



Source: Hidalgo County Tax Office Reports

FUTURE OVERVIEW

Our office is committed to making necessary adjustments to our collection procedures and methods to best advocate for McAllen Independent School District. We will continue to offer firm yet flexible payment options for the McAllen Independent School District taxpayers.

Review of Pending Judgments and the Filing of Additional Lawsuits

During the next quarter we will continue to work pending lawsuits for full payment or payment agreements. We will also continue researching the delinquent tax roll for possible new lawsuits; both real and personal property accounts.

Continued Monitoring of Bankruptcy Accounts

As a continuation of our standard operating practice, we will actively monitor and verify accounts in bankruptcy for the payment of taxes, penalties, and interest owed to the School District.

Mailing Program

For this next quarter, we have scheduled one mailing on behalf of the McAllen Independent School District for the following month:

- May 2023 (Pending)

Scheduling of Property Sales

As properties are taken to judgment, they will be reviewed and checked for payment. Those judgments with no taxpayer response will be further reviewed and scheduled for possible tax sale.

Execution of the work plan established for the McAllen Independent School District will include the constant monitoring of collection figures in order to adjust resources and enforce the collection of delinquent taxes. Our collection efforts will also include prosecuting pending suits to conclusion, mailing monthly letters, and filing new suits in order to maximize the collection of taxes. We will continue to work closely with you and your administrative staff to provide assistance and advice on all property tax matters, including changes in the law brought about by amendments to the Texas Property Tax Code.

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

SUBJECT: Report Regarding the Delinquent Tax Collections for the Period of January 1, 2023 to March 31, 2023

REFERENCE: Goal 4, Strategy 7 - Financial Priorities

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

In order to keep the Board of Trustees informed, the firm of Linebarger, Goggan, Blair & Sampson LLP has prepared the enclosed Delinquent Tax Collection Report

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The report summarizes the results achieved by Linebarger, Goggan, Blair & Sampson LLP on the delinquent tax collection efforts for the 2022 - 2023 fiscal year.

LEGAL REVIEW:

Not Required.

BUDGETARY CONSIDERATIONS:

None.

RECOMMENDED BOARD ACTION:

The Report Regarding the Delinquent Tax Collections for the Period of January 1, 2023 to March 31, 2023 is submitted to the Board for information purposes only and requires no Board action.

SUBMITTED BY: 

SUPERVISOR: 

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

Approved for presentation to the Board of Education:



35 _____
Superintendent of Schools

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

SUBMITTED BY: _____

Rosalba De Hoyos
SUPERVISOR: _____

Approved for presentation to the Board of Education:

J. X. O'Connell

36 _____
Superintendent of Schools May 3, 2023

SHRINK BOX

***Report Regarding New
Partnership***

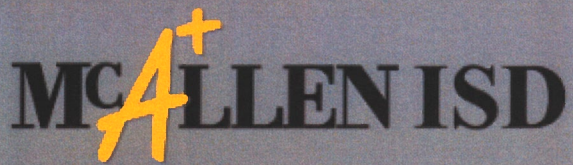


MC^{A+}ALLEN ISD

The Purpose of the Shrink Box Partnership

MC^{A+}ALLEN ISD

**Expand
opportunities for
students, parents,
and school
personnel in the
area of Mental
Health and School
Safety.**



**The Shrink
Box
Partnership
will provide
the
following
services:**

1

**Strengthen support to the
current school safety plan**

2

**Provide Training on Threat
Assessment to Staff**

3

Staff Student Cases

4

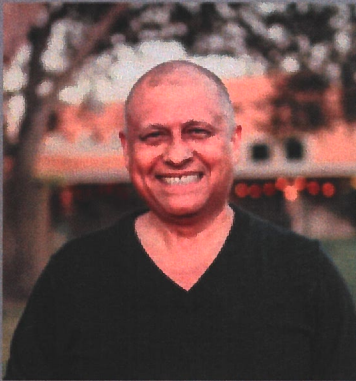
**Junior Psychiatrist -
Internship program**

The partnership is at no ³⁹cost to McAllen ISD.

Shrink Box Founders



Dr. German Corso is a medical doctor, trained and board certified in child, adolescent, and adult psychiatry. He holds a position as Clinical Assistant Professor of Psychiatry at UTRGV School of Medicine and is actively involved in the education of medical students and training of residents in psychiatry and primary care.



Dr. Daniel Gutierrez is a psychiatrist who received his medical degree from the Universidad de Montemorelos School of Medicine and has practiced for over 20 years.



Dr. Ricardo Irizzary is a psychiatrist with over 21 years of medical experience and extensive expertise in psychotic disorders. He graduated from the Ponce School of Medicine in 2001.



Questions

A glowing orange cube is centered on a black background. The words "SHRINK" and "BOX" are written in a white, sans-serif font across the front face of the cube. The cube has a slight 3D effect with some shading on its edges.

SHRINK
BOX

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

SUBMITTED BY: *Laura Williams*
Laura Williams (May 3, 2023 13:01 CDT)

SUPERVISOR: *Adelino*

Approved for presentation to the Board of Education:

J. Alexander

43 _____
Superintendent of Schools



**Report Regarding Intent to Apply for FY 2023
COPS School Violence Prevention Program**

**Board Meeting
May 8, 2023**

Highlights of the FY 2023 COPS School Violence Prevention Program:

Key Dates:

- Grants.gov application deadline is May 10, 2023
- JustGrants application deadline is May 17, 2023
- Grant period starts 10/1/23
- Performance period is 36 months
- Anticipated number of awards: 235
- Anticipated Maximum dollar amount of awards is \$500,000

Purpose:

To improve security at schools and on school grounds through the implementation of evidence-based school safety program and technology.

Thank you.

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

SUBMITTED BY: *Laura Williams*
Laura Williams (May 3, 2023 08:46 CDT)

SUPERVISOR: *Adelino*

Approved for presentation to the Board of Education:

J. Alexander

47 _____
Superintendent of Schools



Report Regarding Intent to Apply for STOP THE BLEED Grant Programs

Board Meeting

May 8, 2023

Highlights of STOP THE BLEED Grant Programs:

Key Dates:

- Applications being accepted until May 31, 2023
- \$1,000 value for the STOP THE BLEED training kit
- \$15,000 value for the STOP THE BLEED Response Cabinet
- \$100,000 value for the STOP THE BLEED Response Station

Purpose:

To train 200 million people across the nation in the years ahead.

The kits can be used to teach the hands on, American College of Surgeons, STOP THE BLEED course and other Department of Defense approved STOP THE BLEED courses.

Components
of the STOP
THE BLEED
training kit:



The following components are included in the STOP THE BLEED[®] Training Kit

- STOP THE BLEED[®] Instructional booklets (10)
- Blue training tourniquets (5)
- QuikClot[®] Combat Gauze Moulage Trainers (8)
- Trauma Trainer legs (2) – for dry use only
- Protective gloves (12 pairs)

Components
of the STOP
THE BLEED
Response
Cabinet:



The grant consists of:

- Up to ten (10) STB Response Cabinets, which includes two STB Response Belts. Each belt has four (4) STB Kits
- Includes shipping costs
- Note – AED Device pictured is for illustration only

STOP THE BLEED® Response Station



The grant consists of:

- A STB Response Station, which includes five STB Response Belts. Each belt has four (4) STB Kits.
- Siting and installation costs at a mutually agreed upon location owned or sponsored by the grantee.
- 3 years of Station operating costs.

Thank you.

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

SUBMITTED BY: *Jenny Vega*
Jenny Vega (May 3, 2023 11:58 CDT)

SUPERVISOR: *Rosalba De Hoyos*

Approved for presentation to the Board of Education:

J. X. O'Leary

54 _____
Superintendent of Schools

RECOMMENDED VENDORS

Request for Proposal No. 2021-1000R
Library Books, e-Books, Textbooks, Audiovisual Materials
and Instructional Reading Materials Discount-from-List
(Round 21)

No.	Vendor Name	City	State	Recommendation
1	Smart Start Curriculum LLC	Laredo	TX	Recommended

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

SUBMITTED BY: *Lilia Sandoval Silva*

SUPERVISOR: *Rosalba De Hoyos*

Approved for presentation to the Board of Education:

J. X. O'Connell

56 _____
Superintendent of Schools

RECOMMENDED VENDORS

Request for Proposal No. 2021-1007

Career & Technology Materials, Supplies, Equipment, & Related Services Discount-from-List
(Round 20)

No.	Vendor Name	City	State	Recommendation
1	Flinn Scientific Inc	Batavia	IL	Recommended

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

SUBMITTED BY: *Karen Nitsch (Adv. Academics)*

SUPERVISOR: *Rosalba De Hoyos*

Approved for presentation to the Board of Education:

J. Alexander

58 _____
Superintendent of Schools

CONTRACT TRAINING AGREEMENT South Texas College

This **Contract Training Agreement** is made and entered into as of the 28th day of April, 2023 and is by and between **SOUTH TEXAS COLLEGE (STC)**, an institution of higher education authorized by the laws and Constitution of the State of Texas, and **MCALLEN INDEPENDENT SCHOOL DISTRICT (ISD)**, a Texas public school district.

WHEREAS, the ISD requires training and educational services, as more fully described in **Attachment “A,”** and STC has the expertise, resources, personnel, and experience required to provide such services;

WHEREAS, this Agreement is of mutual interest and benefit to STC and the ISD;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the ISD and STC (sometimes collectively referred to herein as the “Parties”) agree as follows:

1. Services and Fees

a. During the term of this Agreement, STC shall provide training services to the ISD as set forth in **Attachment “A”** (the “Services”) which is incorporated herein by reference. The Services may be modified with the advance written consent of the Parties. If there is any conflict between the terms and conditions of the Services described in **Attachment “A”** and those contained in the body of this Agreement, the terms of the Agreement shall control.

b. The ISD shall pay STC for the Services in accordance with the terms and conditions set forth in **Attachment “A.”**

2. STC’s Responsibilities and Representations

a. STC represents that all persons connected with STC who are directly in charge of providing the Services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.

b. STC represents that to the best of its actual knowledge, as a result of providing the Services, there are no conflicts of interest between the ISD and any other person or entity for whom STC is providing or has provided training services. If, during the course of this Agreement, STC becomes aware of facts that constitute or may reasonably lead to a conflict of interest, STC shall promptly notify the ISD.

c. Except as may be expressly set forth in **Attachment “A,”** STC represents that its performance does not depend on the acquisition of rights from any third party and that the conveyance of any deliverables described as part of the Services will not knowingly infringe on the intellectual property rights of any third party.

d. STC shall: i) designate an administrator to oversee and administer STC’s performance of the Services; ii) provide one or more qualified trainers, training materials and equipment

appropriate for the Services; iii) assume full responsibility for complying with the requirements of the U.S. Copyright Act with respect to any training materials provided by STC in connection with providing the Services; iv) ensure that any facilities that will be used for the Services will be open and ready for use on the date(s) and time(s) specified for the Services, if the Services will take place at STC; and v) provide certificates of completion for the participants who complete the training requirements as outlined in the Services.

3. ISD's Responsibilities and Representations

The ISD shall: i) designate a contact person to communicate with STC about any specific requirements of the training program for which the Services are being provided and in connection with general planning and coordination; ii) refrain from copying, reproducing, creating derivative works, publishing, or further distributing any training materials provided by STC; iii) make all required payments to STC in accordance with the Texas Prompt Payment Act (Texas Govt. Code Chapter 2251); and, iv) pay 25% of the total fee to STC if the ISD cancels the Services within 30 days of the first day on which the Services were to be provided, unless the cancellation is permitted by the terms of this Agreement.

4. Default and Termination

a. If a party breaches this Agreement, the other party may, so long as such party has not caused the breach, terminate this Agreement upon ten (10) days written notice describing the details of the breach. The termination shall, however, not be effective if the breach is fully cured prior to the end of the ten-day period.

b. STC or ISD may for any reason, or no reason, terminate this Agreement at any time upon giving thirty (30) days advance written notice to the other party. If either party terminates this Agreement for convenience, it shall have no financial liability to the other party of any kind other than refunding any sums paid for any services that were not performed.

c. The ISD acknowledges and agrees that by providing the Services, STC is not making any representation or warranty concerning the ISD's future performance or success and that STC is not responsible in any way for the operation of the ISD's business.

d. If STC breaches its obligations under this Agreement, STC may correct or replace any of the Services or repay the portion of the compensation paid by the ISD corresponding to the non-conforming Services. STC shall not be liable to the ISD for any other damages, either special, direct, indirect, incidental, consequential or otherwise, and in no event shall the liability of STC exceed the total amount paid by the ISD under this Agreement.

e. Neither party will be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character.

5. Miscellaneous

a. The relationship created by this Agreement shall be that of independent contractor. Nothing in this Agreement shall be read to make the employees or agents of either party an employee or an agent of the other.

b. This Agreement constitutes all representations, oral and written, of the work to be performed, replaces all previous agreements, and constitutes the entire agreement between the Parties; this Agreement may be modified only in writing, signed by each party, after reasonable notice.

c. {Intentionally Omitted}

d. As a public community college of the state of Texas, STC is immune from actions in tort, except those arising from the use and operation of a motor vehicle. ISD, a public school district, is immune from actions in tort, except those arising from the use and operation of a motor vehicle. Nothing in this Agreement shall be interpreted to constitute a waiver of this immunity by either party

e. This Agreement shall inure to the benefit of and be binding upon the respective heirs, executors, successors, representatives, and assigns of the Parties, as the case may be.

f. STC, as part of an institution of higher education and recipient of federal and state funding, is subject to federal and state civil rights laws and regulations prohibiting it from discriminating on the basis of race, ethnicity, gender, creed, age, disability or Veterans status in any program or activity of STC. This Agreement, and the Services offered pursuant to this Agreement, are subject to the provisions of those laws and regulations, and the ISD agrees that it will cooperate in any civil rights investigation conducted by STC or any external agency regarding the Services or STC's performance of this Agreement.

g. This Agreement shall be governed by and construed in accordance with the laws of the state of Texas. Each party submits to the exclusive jurisdiction of the courts located in Hidalgo County, Texas for the purpose of any action or proceeding brought by either of them in connection with this Agreement or any alleged breach thereof.

h. Neither party shall assign its rights or obligations hereunder without the prior written consent of the other party. STC shall not subcontract, either directly or indirectly, any of its responsibilities hereunder without the prior written consent of the ISD.

IN WITNESS WHEREOF, South Texas College and McAllen ISD have executed and delivered this Agreement as of the date first above written.

(STC) SOUTH TEXAS COLLEGE:

MCALLEN INDEPENDENT SCHOOL DISTRICT:

By: _____
Dr. Ricardo Solis,
President

By: _____
Board of Trustees, President

By: _____
Dr. Anahid Petrosian,
Vice President

Approved as to form:
Walsh Gallegos Treviño Kyle & Robinson P.C.

Leandra C. Ortiz
By: Leandra C. Ortiz (Apr 27, 2023 09:00 CDT)

By: _____
Olivia de la Rosa,
Dean

Leandra C. Ortiz

Type of Funding: Federal ___; CFDA ___; State ___; Local X; Private ___

Upon the execution of this Agreement, please return both copies in the envelope provided for your convenience. When all signatures are obtained, one fully executed original will be returned for your records. Please mail to:

South Texas College
Department of Continuing Education
Attn. Olivia de la Rosa, Dean
2621 W. Pecan Blvd.
McAllen, TX 78501
Phone (956) 872-3856
Fax (956) 872-6753

ATTACHMENT A
SERVICES AND COSTS


South Texas College will provide 20 hours of Cyberpatriot Camp, to MISD participants.


Program Title:	Cyberpatriot Camp
Course No./Name:	KDS 2005
Total No. of Hours:	Cyberpatriot Basic – 20 hours
Administrator Responsible:	Jose Raul Ruiz
MISD Contact:	Karen B. Nitsch, Director of Advanced Academic Services/IB karen.nitsch@mcallenisd.org
MISD Billing:	2200 Tamarack Ave, Portable 78 McAllen, Texas 78501
Dates:	June 05-08, 2023 Cyberpatriot Basic
Time:	8:30 to 2:00 p.m. (30 minutes lunch onsite)
Location:	STC, Pecan Campus
Participants:	3 Groups (25 participants per group)
MISD Chaperones:	1 MISD Chaperone per group (Total of 3 chaperones)
Tuition:	\$112.60 per participant
CyberCamp T-shirt:	\$14.53 per shirt (75 for Students + 3 for MISD chaperones)
Meals:	\$12.00 X 4 days= \$48 Per participant (75 for Students + 3 for MISD chaperones)
Total per Participant:	\$175.13 per participant
Meals for Chaperones:	\$12.00 X 4 days = \$48.00 per MISD chaperone
Total Due:	\$4,440.78 for 25 participants X (3 Groups) = \$13,322.34

The minimum cost for 25 or fewer participants per group shall remain at \$4,440.78 as the recovery cost. Additional participants will be charged at the rate of \$175.13 per participant.

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

SUBMITTED BY: 

SUPERVISOR: 
Bridgette Vich (May 4, 2023 14:00 CDT)

Approved for presentation to the Board of Education:



64 _____
Superintendent of Schools

INTERLOCAL COOPERATION CONTRACT

This Agreement is made and entered into by and between the CITY OF MCALLEN hereinafter referred to as “City”, and the MCALLEN INDEPENDENT SCHOOL DISTRICT, a political subdivision of the State of Texas, hereinafter referred to as “District,” acting through its Board of Trustees (the City and District collectively referred to as the “Parties”). Authority for this Agreement is granted and pursuant to the Interlocal Cooperation Act, Texas Government Code, Section 791.

WITNESSETH

WHEREAS, Chapter 791 of the Texas Government Code, as amended, authorizes contracts between political subdivisions for the performance of governmental functions and services; and

WHEREAS, the Parties will receive the mutual benefits of this arrangement by committing to the agreed-upon obligations hereunder; and

WHEREAS, the governing bodies of the Parties have each met in legally convened open meetings and authorized their respective representatives to enter into this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements stated herein, the parties hereto agree as follows:

ARTICLE I

PURPOSE:

The purpose of this contract is to provide services to the District by the City. The services include educational driven programs through its center facility to the District.

ARTICLE II

TERM:

2.1 The term of this Agreement shall commence on September 1, 2023 and remain in effect until May 31, 2024, unless sooner terminated as herein provided.

2.2 This Agreement may be terminated during the term, by either party providing thirty (30) calendar days’ written notice.

ARTICLE III

STATEMENT OF SERVICES TO BE PERFORMED:

3.1 City will perform the following work and services described on Exhibits shown below and comply with all the terms and conditions of the Contract (the “Contract Documents”).

- ✓ Exhibit “A” for 3rd Grade
- ✓ Exhibit “B” for 5th Grade 65
- ✓ Exhibit “C” for 7th Grade
- ✓ Exhibit “D” for AP Environmental Science and Aquatic Science

3.2 City will provide environmental programs, guided tours and curriculum materials for teachers and students services.

WARRANTIES:

3.3 The District warrants that (1) the services are necessary and authorized for activities that are properly within its statutory functions and programs; (2) it has the authority to contract for the services under authority granted in Chapter 11, Texas Education Code, and Chapter 791, Texas Government Code; (3) it has all necessary power and has received all necessary approvals to execute and deliver this Contract, and (4) the representative signing this Contract on its behalf is authorized by its governing body to sign this Contract.

3.4 The City warrants that (1) it has authority to perform the services; (2) it has all necessary power and has received all necessary approvals to execute and deliver this Contract, and (3) the representative signing the Contract on its behalf is authorized by its governing body to sign this Contract.

ARTICLE IV

AGREEMENT AMOUNT:

The total amount of this Agreement shall not exceed:

- Exhibit “A” for 3rd Grade – shall not exceed \$9,800
- Exhibit “B” for 5th Grade – shall not exceed \$10,150
- Exhibit “C” for 7th Grade – shall not exceed \$2,520.00
- Exhibit “D” for AP Environmental Science & Aquatic Science – shall not exceed \$5,600

PAYMENT:

The District will remit payments to the City for services satisfactory performed under this Contract within thirty (30) calendar days of receipt of an invoice by the District. As per Section 151.309, Texas Tax Code, the District is exempt from the assessment of the State sales, use, and excise taxes. Further, the District is exempt from Federal Excise Taxes, 26 United States Code Section 5253(i) and (j). Excise tax exemption certificates will be issued by the City, as applicable, for items designated as requiring such certificates. Upon request, the District agrees to furnish City with a valid tax exemption for each jurisdiction in which it is claiming an exemption.

Payments made under this Contract (1) are based on cost recovery, (2) will fairly compensate Performing Party for the services performed under this Contract, and (3) will be made from current revenues available to Receiving Party.

ARTICLE V

NOTICES:

Except as otherwise provided by this Section, all notices, consents, approvals, demands, requests or other communications provided for or permitting to be given under any of the provisions of this

Contract will be in writing and will be sent via certified mail, hand delivery, overnight courier, facsimile transmission (to the extent a facsimile number is set forth below), or email (to the extent an email address is set forth below) as provided below, and notice will be deemed given (i) if delivered by certified mailed, when deposited, postage prepaid, in the United States mail, or (ii) if delivered by hand, overnight courier, facsimile (to the extent a facsimile number is set forth below) or email (to the extent an email address is set forth below), when received:

If to the City: City of McAllen
 Attn: Quinta Mazatlán
 600 Sunset Drive
 McAllen, Texas 78503

If to the District: McAllen ISD
 2000 N. 23rd Street
 McAllen, Texas 78501
 Phone: (956) 632-3241
 Fax: (956) 632-8848

or such other person or address as may be given in writing by either party to the other in accordance with this Section.

Notwithstanding any other requirements for notices given by a party under this Contract, if the District intends to deliver written notice to the City pursuant to Section 2251.054, Texas Government Code, then the District will send that notice to the City as follows:

City of McAllen
Attn: Quinta Mazatlán
600 Sunset Drive
McAllen, TX 78503

ARTICLE VI

GENERAL PROVISIONS:

6.1 Public Information.

6.1.1 District and City acknowledge that each is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.

6.1.2 Upon City's or District's written request, each will provide the other specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, Texas Government Code, to the other Party in a non-proprietary format reasonably acceptable to the other Party. As used in this provision, "public information" has the meaning assigned Section 552.002, Texas Government Code, but only includes information to which City or District has a right of access.

6.1.3 The Parties acknowledge that the other may be required to post a copy of the fully executed Agreement on its website.

6.2 In the event that one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

6.3 The validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the parties, shall be governed by the laws of the State of Texas. Furthermore, this Agreement is entered into in Hidalgo County, Texas and venue shall lie in such county.

6.4 No amendment, modification or alteration to this Agreement shall be binding unless the same be in writing, dated subsequent to the beginning date hereof and duly executed by the parties hereto.

6.5 This Agreement shall be binding on and inure to the benefit of the parties hereto and their matter of this Agreement and supersedes any prior understandings, whether written or oral.

6.6 This Agreement constitutes the sole and only agreement of the parties pertaining to the subject matter of this Agreement and supersedes any prior understandings, whether written or oral.

6.7 The relationship of District and the City shall, with respect to that part of any service or function undertaken as a result of or pursuant to this Agreement, be that of independent contractors. Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship between the Parties hereto.

6.8 The captions contained in this Agreement are for convenience of reference only and in no way limit or expand the terms or conditions of this Agreement.

6.9 No Party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, council members, officers, employees, and agents as a result of the execution of this Agreement and the performance of the covenants and agreements contained herein.

6.10 This Agreement inures to the benefit of and obligates only the Parties executing it. No term or provision of this Agreement shall benefit or obligate any person or entity not a Party to it. The Parties hereto shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release, or other consideration under this Agreement.

6.11 Neither Party shall assign or transfer any interest in this Agreement without prior written approval of the other Party.

6.12 In providing the services under this Agreement, both parties agree to and shall abide by any and all Federal, including but not limited to the Family Educational Rights and Privacy Act (FERPA) 20 USC §1232g, State and Local law, including, but not limited to a statute, ordinance, rule or regulation, pertaining to such services which is in effect or comes into effect while this Agreement is in force. Notwithstanding any other provisions of this Agreement, any violation of this Section 5.11 shall constitute a material breach of this Agreement and shall entitle the non-breaching party the right to immediately terminate this Agreement and seek all remedies allowed by law.

6.13 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. A signature transmitted by facsimile or similar equipment shall be deemed an original signature.

6.14 Renewal of this contract (if appropriate) will be in accordance with the Texas Local Government Code Section 271.903 concerning the non-appropriation of funds for multi-year contracts. The District reserve the right to rescind the contract at the end of each fiscal year (as of August 31st) if it is determined that there are insufficient funds to extend the contract.

6.15 This Agreement does not create an employment relationship between the District’s employees and the City, nor the City’s employees and the District, and other than as agreed herein, neither Party shall have nor exercise any control or direction over specific methods or judgment by which District or City perform their services.

6.16 This Agreement constitutes a final written expression of all the terms of this Agreement and is a complete and exclusive statement of those terms.

6.17 The person signing on behalf of each Party represents and warrants and certifies that they have full legal authority to execute this Agreement on behalf of said Party and has authority to bind said Party to all the terms, conditions, provisions and obligations contained herein.

6.18 **Federal Terms.** City agrees and certifies compliance with all applicable Federal Terms and Conditions, including but not limited to the following:

1. That all services will be completed during the effective dates of the contract.
2. That all services will be paid only upon receipt of a proper invoice that coincides with the contract upon verification that the services were satisfactorily performed in accordance with the description in the contract. For ongoing services, payment may be made at the end of every month upon receipt of the invoice. Independent Contractors will not be paid in advance.
3. Invoices provided by the City will include the list of services provided, dates of services, and location(s) where services were provided during the billing period.
4. The District agrees that it complies with the regulations pertaining to procurement in 2 C.F.R. § 200.318 - .323.
5. The District agrees that complies with the provisions in 2 C.F.R. § 200.459 pertaining to allowable professional service costs.
6. The Agreement is for only reasonable, necessary, and allocable services to be provided in accordance with the funding sources that will be charged.
7. The District agrees that the administrative costs charged to the grant in the contract will be reasonable and must comply with any statutory limitations for administrative costs specified in the federal program funding source.
8. The Federal Terms and Conditions are incorporated by reference herein and attached as Exhibit E.

Executed effective as of the Effective Date by the following duly authorized representatives of the Contracting Parties:

THE DISTRICT:
McAllen Independent School District

THE CITY:
Name: City of McAllen, Quinta Mazatlán

By: _____

By: _____

Board President

Roel “Roy” Rodriguez
City Manager

Approved as to form:
Walsh Gallegos Treviño Kyle & Robinson

P.C.: Destinee Gesing
By: Destinee Gesing (Apr 28, 2023 14:57 CDT)
Destinee Gesing, Attorney

Approved as to form:

By: _____
Isaac Tawil, City Attorney

EXHIBIT "A" "3RD GRADE CONTRACT"
DEFINITION OF SERVICES

Contractor shall provide the following services to District at a rate of \$7.00 per student, not to exceed \$9,800 during this Contract term:

- ✓ Environmental Education Program titled:

HABITATS, ADAPTATIONS & LIFE CYCLES

The program is for all District students in Grade Three (3) and will include a hands on classroom lesson and guided interpretative tour on the trails.

- ✓ Schedule is as follows:

Departure from School Campus	8:15 am
Arrival at Quinta Mazatlán	8:45 am - 8:55 am
Program begins at Quinta Mazatlán	9:00 am
Departure from Quinta Mazatlán	1:00 pm

NOTE: The children have lunch at Quinta Mazatlán following their educational program. Lunch is the responsibility of the school. School is to pack lunches in igloos that can be carried off the bus by MISD staff. Quinta Mazatlán provides tables, chairs and recycling bins for the lunch.

- ✓ If inclement weather prohibits outside time on the trails, Quinta Mazatlán has designed equivalent lesson for indoor and patio delivery of the program.
- ✓ All hands-on materials for the on sight environmental program are provided by the Contractor.
- ✓ Contractor asks District to provide 1 Adult Chaperone (teacher OR parent) for every 10 students.
- ✓ Contractor asks for the MISD teachers to please complete a short Evaluation Form, prior to leaving Quinta Mazatlán.

EXHIBIT "B" "5TH GRADE CONTRACT"
DEFINITION OF SERVICES

Contractor shall provide the following services to District at a rate of
\$7.00 per student, not to exceed \$10,150 during this Contract term:

- ✓ Environmental Education Program titled:

CONNECTIONS IN THE ECOSYSTEM

The program is for all District students in Grade Five (5) and will include a hands on classroom lesson and guided interpretive tour on the trails.

- ✓ Schedule is as follows:

Departure from School Campus	8:15 am
Arrival at Quinta Mazatlán	8:45 am - 8:55 am
Program begins at Quinta Mazatlán	9:00 am
Departure from Quinta Mazatlán	1:00 pm

NOTE: The children have lunch at Quinta Mazatlán following their educational program. Lunch is the responsibility of the school. School is to pack lunches in igloos that can be carried off the bus by MISD staff. Quinta Mazatlán provides tables, chairs and recycling bins for the lunch.

- ✓ If inclement weather prohibits outside time on the trails, Quinta Mazatlán has designed equivalent lesson for indoor and patio delivery of the program.
- ✓ All hands-on materials for the on sight environmental program are provided by the Contractor.
- ✓ Contractor asks District to provide 1 Adult Chaperone (teacher OR parent) for every 10 students.
- ✓ Contractor asks for the MISD teachers to please complete a short Evaluation Form, prior to leaving Quinta Mazatlán.

EXHIBIT "C" "7th GRADE CONTRACT"

DEFINITION OF SERVICES

Contractor shall provide the following services to District at a rate of \$7.00 per student, not to exceed \$2,520 during this Contract term:

- Environmental Education Program titled:

SAVE THE BIOME!

The program is for all District students in Grade Seven (7) and will include a hands-on classroom lesson and guided interpretive tour on the trails.

- Schedule is as follows:

Departure from School Campus	8:15 am
Arrival at Quinta Mazatlán	8:45 am - 8:55 am
Program begins at Quinta Mazatlán	9:00 am
Departure from Quinta Mazatlán	1:00 pm

NOTE: The children have lunch at Quinta Mazatlán following their educational program. Lunch is the responsibility of the school. School is to pack lunches in igloos that can be carried off the bus by MISD staff. Quinta Mazatlán provides tables, chairs and recycling bins for the lunch.

- If inclement weather prohibits outside time on the trails, Quinta Mazatlán has designed equivalent lesson for indoor and patio delivery of the program.
- All hands-on materials for the on sight environmental program are provided by the Contractor.
- Contractor asks District to provide 1 Adult Chaperone (teacher OR parent) for every 10 students.
- Contractor asks for the MISD teachers to please complete a short Evaluation Form, prior to leaving Quinta Mazatlán.

EXHIBIT "D" "HIGH SCHOOL AP ENVIRONMENTAL SCIENCE AND AQUATIC SCIENCE CONTRACT"

DEFINITION OF SERVICES

Contractor shall provide the following services to District at a rate of \$7.00 per student, not to exceed \$5,600 during this Contract term:

- Environmental Education Program titled:

AQUATIC FIELD SCIENCE DAY

The program is for all District students in High School AP Environmental Science and Aquatic Science and will include a hands-on classroom lesson and guided interpretive tour on the trails.

- Schedule is as follows:

Departure from School Campus	8:15 am
Arrival at Quinta Mazatlán	8:45 am - 8:55 am
Program begins at Quinta Mazatlán	9:00 am
Departure from Quinta Mazatlán	1:00 pm


NOTE: The children have lunch at Quinta Mazatlán following their educational program. Lunch is the responsibility of the school. School is to pack lunches in igloos that can be carried off the bus by MISD staff. Quinta Mazatlán provides tables, chairs and recycling bins for the lunch.

- If inclement weather prohibits outside time on the trails, Quinta Mazatlán has designed equivalent lesson for indoor and patio delivery of the program.
- All hands-on materials for the on sight environmental program are provided by the Contractor.
- Contractor asks District to provide 1 Adult Chaperone (teacher OR parent) for every 10 students.
- Contractor asks for the MISD teachers to please complete a short Evaluation Form, prior to leaving Quinta Mazatlán.

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

SUBMITTED BY: 

SUPERVISOR: 
Alejandra Gonzalez (May 5, 2023 08:37 CDT)

Approved for presentation to the Board of Education:



75 _____
Superintendent of Schools

**SECOND AMENDMENT TO
CONTRACT NO. 2022-194 Park Place Recreation Designs, Inc.**

This Second Amendment to Contract No. 2022-194 (the "Contract") effective this 8th day of May 2023 by and between McAllen Independent School District ("District") and Park Place Recreation Designs, Inc, a Texas Corporation ("Contractor") as follows:

WHEREAS, the District entered into Contract No. 2022-194 dated June 13, 2022; and

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

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

1. Extend the Term of the Contract until June 30, 2023;
2. Except as modified herein, all terms and conditions of the Contract, as amended, remain in full force and effect. District and Contractor ratify and confirm the terms and provisions of the Contract as amended.

EXECUTED IN DUPLICATE ORIGINALS and effective as of _____.
Date

McALLEN INDEPENDENT SCHOOL DISTRICT

Park Place Recreation Designs, Inc.

By: _____
Board President

By: _____
Marilyn Ahrens, Vice President

Approved as to form:

Walsh Gallegos Treviño Kyle & Robinson P.C.

by: Leandra C. Ortiz
Leandra C. Ortiz (May 2, 2023 11:31 CDT)

Leandra Costilla Ortiz

**FIRST AMENDMENT TO
CONTRACT NO. 2022-194 Park Place Recreation Designs, Inc.**

This First Amendment to Contract No. 2022-194 (the "Contract") effective this 23rd day of January 2023 by and between McAllen Independent School District ("District") and **Park Place Recreation Designs, Inc**, a Texas Corporation ("Contractor") as follows:

WHEREAS, the District entered into Contract No. 2022-194 dated June 13, 2022; and

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


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

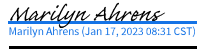
1. Extend the Term of the Contract until May 19, 2023;
2. Except as modified herein, all terms and conditions of the Contract, as amended, remain in full force and effect. District and Contractor ratify and confirm the terms and provisions of the Contract as amended.

EXECUTED IN DUPLICATE ORIGINALS and effective as of January 24, 2023
Date

McALLEN INDEPENDENT SCHOOL DISTRICT

Park Place Recreation Designs, Inc.

By: 
Tony Forina, Board of Trustees

By: 
Marilyn Ahrens, Vice President

Approved as to form:

Walsh Gallegos Treviño Kyle & Robinson P.C.

by: 
Leandra Costilla Ortiz

MCALLEN INDEPENDENT SCHOOL DISTRICT
CONTRACT NO. 2022-194 Park Place Recreation Designs, Inc. through Interlocal Cooperative Agreement
No. 2020-002 through Request for Cooperate Quotes 2022-1054

This Contract, dated on June 13, 2022, and entered into effective by and between **McAllen Independent School District** (hereinafter referred to as "District") and **Park Place Recreation Designs, Inc.** a Texas corporation (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, District is a party/member to an Interlocal Cooperative Agreement with Buyboard (the "Cooperative");

WHEREAS, through the Cooperative, District may award contract(s) to Cooperative awarded vendors;

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

WHEREAS, District requested quotes from vendors, more particularly described on Exhibit A attached hereto;

WHEREAS, Contractor submitted a quote in response to the needs of the District;

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

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

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

WHEREAS, this project is being funded by Community Development Block Grant funds and is subject to the following Federal requirements: Executive Order 11246; Clause 3 of the HUD Act of 1968; Title IV of the Civil Rights Act of 1964; Title VII of the Civil rights Act of 1968; and Section 109 of the Housing and Community Development Act of 1974.

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

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

1. OBLIGATIONS OF THE CONTRACTOR

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

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

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

- A. This Contract
- B. Exhibit "A" – District RFCQ No. 2022-1054
- C. Exhibit "B" – Contractor's Response Pursuant to RFCQ No. 2022-1054
- D. Exhibit "C" – Federal Provisions
- E. Exhibit "D" – Contractors Insurance
- F. Exhibit "E" – Payment and Performance Bonds

This Contract is entered into subject to the following conditions:

- A. Contractor shall use its best efforts to keep to a minimum disruption or interruption of duties and/or work of employees of District and /or the learning environment of students of District while performing its work in accordance with the Contract Documents.
- B. Contractor assumes full responsibility and liability for all labor and materials furnished and activities conducted by Contractor pursuant to this Contract and any action or omission incident thereto.

2. INSURANCE COVERAGE

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

- A. Statutory Workers' Compensation (REQUIRED FOR WORK PERFORMED ON DISTRICT PROPERTY) and Employer's Liability Limits - \$500,000
- B. Commercial General Insurance (occurrence basis only) \$1,000,000 each claim and in the aggregate

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

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

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

3. TRANSFER, ASSIGNMENT, ETC.

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

4. ADJUDICATION

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

5. PROVISIONS, PARAGRAPHS

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

6. PAYMENT

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

7. TAXES AND BENEFITS

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

8. INCURRING FINANCIAL OBLIGATION

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

9. ACCESS TO BOOKS AND RECORDS

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

10. NON-DISCRIMINATION

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

11. HOLD HARMLESS

Contractor agrees to hold harmless and indemnify District from any liability and/or damages, which may directly or indirectly arise from or occur in connection with Contractor's performance under this Contract or any action, activity or omission incident thereto. Such indemnification shall include but not be limited to all District's attorneys' fees and costs incurred in defending or responding to any action brought or threatened against District for any action or omission arising from or incident to Contractor's performance under this Contract.

12. TERM AND TERMINATION OF CONTRACT

Term. The term of this Contract shall commence on June 14, 2022, and remain effective through January 31, 2023. All services must be completed during the term of the Contract.

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

B. **Termination with Cause.**

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

- i. Any conduct of the Contractor, which jeopardizes the health, safety, or welfare of any person, or the safety, reputation, or the regular functions of the District.
 - ii. Failure to provide evidence of liability insurance, as required by numbered Paragraph 2 hereof.
 - iii. Failure of Contractor to immediately bar any individual from performing services under this Contract, if such individual does not meet the qualifications required by this Contract or if such individual commits a material breach of one of the terms of this Contract.
 - iv. In addition, if the Contractor commits a material breach of any of the terms of this Contract, other than those listed in subsections (i) through (iii) above, District may terminate this Contract upon no less than thirty (30) days written notice.
- b. Termination by Contractor.** In the event District breaches any material term of this Contract, Contractor may terminate this Contract upon no less than fifteen (15) days written notice.
- c. Non-Interference.** Following the expiration of this Contract or its termination for any reason, Contractor agrees to do nothing that may interfere with any contract of District with any other individual or entity for the provision of the services herein.

13. NOTICES

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

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

If to Contractor: Park Place Recreation Designs, Inc.
 Attn: Marilyn Ahrens, Vice President
 Street: 4225 Woodburn Dr.
 City: San Antonio, TX 78218

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

14. LAW

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

15. NO IMPLIED WAIVER

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

16. SEVERABILITY

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

17. ASSIGNABILITY

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

18. AMENDMENTS

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

19. ENTIRE CONTRACT

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

20. INTERPRETATION

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

21. VARIATIONS OF PRONOUNS

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

22. AUTHORIZATION FOR CONTRACT

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

23. IMMUNITIES

Nothing in this Contract is intended to and District does not hereby waive, release or relinquish any right to assert any of the defenses District enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any

sovereign, official or qualified immunity available to District as to any claim or action of any person, entity, or individual against District.

24. NON-APPROPRIATION OF FUNDS.

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

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

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

26. CRIMINAL HISTORY INFORMATION.

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

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

27. ENTITIES THAT BOYCOTT ISRAEL

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

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

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

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

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

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

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

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

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

31. SUSPENSION AND DEBARMENT COMPLIANCE REQUIREMENTS

Contractor shall comply with all requirements on [Part 3.2 – Compliance Requirements](#).

32. BREACH OF CONTRACT AND FEES

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

33. FURTHER DOCUMENTS

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

34. BINDING NATURE

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

35. CONTRACT TERMS CONTROL


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

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

EXECUTED June 20, 2022
Date

DISTRICT:

McAllen Independent School District

By: 
Tony Forina (Jun 20, 2022 11:47 CDT)

Tony Forina

Park Place Recreation Designs, Inc.

By: 
Marilyn Ahrens (Jun 20, 2022 11:45 CDT)

Marilyn Ahrens, Vice President

Approved as to form:
Atlas Hall & Rodriguez, LLP
by: 
Stephen L. Crain (Jun 20, 2022 11:31 CDT)

Stephen Crain

EXHIBIT A

District RFCQ No. 2022-1054



2022-1054 Addendum 1

Jose De Escandon Elementary Inclusive Playscape with Synthetic Turf Surfacing

Issue Date: 5/19/2022

Questions Deadline: 5/27/2022 10:00 AM (CT)

Response Deadline: 6/2/2022 11:00 AM (CT)

Contact Information

Contact: Graciela Garza Senior Buyer
Address: Purchasing Services
Administration Office
2000 N 23rd St
McAllen, TX 78501-6126
Phone: (956) 657-4487
Fax: (956) 6574481
Email: ggarza@mcallenisd.net

Event Information

Number: 2022-1054 Addendum 1
Title: Jose De Escandon Elementary Inclusive Playscape with Synthetic Turf Surfacing
Type: Request for Cooperative Quotes
Issue Date: 5/19/2022
Question Deadline: 5/27/2022 10:00 AM (CT)
Response Deadline: 6/2/2022 11:00 AM (CT)
Notes: McAllen Independent School District (the "District") is accepting quotes through Purchasing Cooperative Contracts .

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

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

This project is being funded by Community Development Block Grant ("CDBG") funds and is subject to the following Federal requirements: Executive Order 11246; Clause 3 of the HUD Act of 1968; Title IV of the Civil Rights Act of 1964; Title VII of the Civil rights Act of 1968; and Section 109 of the Housing and Community Development Act of 1974.

All respondents shall have current contracts through District-approved Purchasing Cooperatives.

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

To schedule a campus visit, Melissa Ortiz, Facilities Project Manager via email to melissa.ortiz@mcallenisd.net.

Ship To Information

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

Billing Information

Contact: Dyanira Diaz, Director
Address: Accounting
2000 N. 23rd Street
McAllen, TX 78501
Phone: (956) 6328403
Email: Dyanira.Farias@mcallenisd.net

Bid Attachments

2022-1054 General Terms and Conditions RFCQ Construction.pdf

General Terms and Conditions

[View Online](#)

2022-1054- Specs.pdf

Specifications

[View Online](#)

2022-1054 Drawings.pdf

Drawings

[View Online](#)

Wage Determination.pdf

Davis Bacon Wage Rates

[View Online](#)

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

IRS Form W-9 Revised Oct 2018 (Fillable Form)

[View Online](#)

CIQ FORM FILLABLE R1.1.2021.pdf

Conflict of Interest Questionnaire (CIQ) form

[View Online](#)

Service Template - thru Coop 11.1.2021.doc

Service Template

[View Online](#)

AIA A105-2017 - Working Draft.docx

AIA 105

[View Online](#)

2022-1054 Addendum1.pdf

Addendum 1

[View Online](#)

2022-1054- Revised Specs.pdf

Revised Specs

[View Online](#)

Requested Attachments

Completed W9 Form

(Attachment required)

Please upload your completed W9 form.

Assumed Name Certificate

Upload your Assumed Name Certificate (if applicable).

Proof of Insurance (Acord Certificate of Insurance Form)

(Attachment required)

Please upload your certificate of insurance in Acord form.

Completed Conflict of Interest Questionnaire.

(Attachment required)

Please upload your completed CIQ.

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

HUB Certificate

Upload your HUB Certificate, if applicable.

Completed Form 1295 Form or Exemption Statement

(Attachment required)

Please upload your completed 1295 Form.

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

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

Bid Attributes

1 General Terms and Conditions

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

****This is your electronic signature.**

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

2 Specifications and Scope of Work

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

****This is your electronic signature.**

I hereby acknowledge.
(Required: Check if applicable)

3 Deviations and Exceptions

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

(Required: Maximum 4000 characters allowed)

4 Form 1295 - Certificate of Interested Parties

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

Access form at:

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

If exempt, attach documentation.

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

5 Delinquent Taxpayers

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

**This is your electronic signature.

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

(Required: Check only one)

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

(Required: Maximum 1000 characters allowed)

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

Yes (upload Assumed Name Certificate)

No

(Required: Check all that apply)

8 Felony Conviction Notification

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

Select where applicable:

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

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

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

**This is your electronic signature.

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

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

(Required: Check only one)

9 Felony Conviction Details

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

(Required: Maximum 4000 characters allowed)

10 Criminal History Record Information Review of Certain Contract Employees

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

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

OR

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

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

**This is your electronic signature.

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

(Required: Check only one)

1
1 Confidential/Copyrighted Information

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

**This is your electronic signature.

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

1
2 Declaration of Business Location - Texas Education Code 44.031(b)(8)

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

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

**This is your electronic signature.

A. Principal place of business is in TX B. Principal place employs 500+ in Texas
 C. Principal place is NOT in Texas
(Required: Check only one)

1
3 Declaration of Business Location - Texas Education Code 44.031(b)(8)

Specify principal place of business (City/State).

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

***This is your electronic signature.

(Required: Maximum 4000 characters allowed)

1
4 Prohibition on Contracts with Companies Boycotting Certain Energy Companies (SB 13)

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

**This is your electronic signature.

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

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

If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies by submitting its proposal that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association.

**This is your electronic signature.

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

16 Entities That Boycott Israel

If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required.

Pursuant to Chapter 2270 of the Texas Government Code, the Vendor hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Vendor, if any (the "Vendor Companies"), boycotts Israel, and the Vendor agrees that the Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

**This is your electronic signature.

I agree and hereby certify.
(Required: Check if applicable)

17 TEXAS GOVERNMENT CODE Sec. 2252.152. CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED.

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

**This is your electronic signature.

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

18 TEXAS GOVERNMENT CODE Sec. 2252.153. LISTED COMPANIES

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

Vendor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State.

**This is your electronic signature.

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

1
9

Non-Collusion Statement

Vendor certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or business or legal entity.

**This is your electronic signature.

I have read and hereby certify.

(Required: Check if applicable)

2
0

Contracts in Excess of \$250,000

Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**This is your electronic signature.

I have read and hereby certify.

(Required: Check if applicable)

2
1

Contracts in Excess of \$10,000

All contracts in excess of \$10,000 must address termination for cause and for convenience including the manner by which it will be affected and the basis for settlement.

**This is your electronic signature.

I have read and hereby certify.

(Required: Check if applicable)

2
2

Equal Employment Opportunity

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

**This is your electronic signature.

I have read and hereby certify.

(Required: Check if applicable)

2
3 **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)**

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146- 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non- Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**This is your electronic signature.

I have read and hereby certify.

(Required: Check if applicable)

2
4 **Contract Work Hours and Safety Standards Acts (40 U.S.C. 3701-3708)**

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**This is your electronic signature.

I have read and hereby certify.

(Required: Check if applicable)

2
5 **Rights to Inventions Made Under a Contract or Agreement**

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

**This is your electronic signature.

I have read and hereby certify.

(Required: Check if applicable)

26 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended

Contracts and subgrants of amounts in excess of \$250,000 must contain a provision that requires the award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**This is your electronic signature.

I have read and hereby certify.

(Required: Check if applicable)

27 (H) Debarment and Suspension (Executive Orders 12549 and 12689)

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

Pursuant to Federal Rule (H) above, when federal funds are expended by the District, the vendor certifies that during the term of an award for all contracts by the District resulting from this procurement process, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas. Vendor shall immediately provide written notice to the District if at any time the vendor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The District may rely upon a certification of a vendor that the vendor is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless the District knows the certification is erroneous.

**This is your electronic signature.

I have read and hereby certify.

(Required: Check if applicable)

28 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

Contractors that apply or submit an offer for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the award.

**This is your electronic signature.

I have read and hereby certify.

(Required: Check if applicable)

2 9 2 C.F.R. § 200.323 PROCUREMENT OF RECOVERED MATERIALS

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

**This is your electronic signature.

I have read and hereby certify.

(Required: Check if applicable)

3 0 2 C.F.R. § 200.216 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

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

**This is your electronic signature.

I have read and hereby certify.

(Required: Check if applicable)

3 1 2 C.F.R. § 200.322 CERTIFICATION OF DOMESTIC PREFERENCES FOR PROCUREMENTS AND COMPLIANCE WITH BUY AMERICA PROVISIONS

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

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

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

**This is your electronic signature.

I have read and hereby certify.

(Required: Check if applicable)

3 2 C.F.R § 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms

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

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

**This is your electronic signature.

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

3 3 Texas Historically Underutilized Businesses (HUB) – Texas Education Code 44.031(b)(6) or Small and Minority Firms, Women's Business Enterprises, & Labor Surplus Area Firms

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

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

**This is your electronic signature.

I am an Active certified HUB vendor (attach HUB ce
 Small & Minority, WBE, Labor Surplus Area Firms I am neither.
(Required: Check only one)

3 4 2 C.F.R § 200.334 RECORDS RETENTION REQUIREMENTS

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

**This is your electronic signature.

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

3 5 Buy American Provision

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

**This is your electronic signature.

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

3 6	<p>Federally Funded Purchases</p> <p>Contractor certifies that Contractor is in compliance with all applicable provisions for federally funded purchases.</p> <p>**This is your electronic signature.</p> <p><input type="checkbox"/> I have read and hereby certify. <i>(Required: Check if applicable)</i></p>
----------------	---

3 7	<p>Addendum</p> <p>Bidder/Respondent acknowledges that he/she will download and review all addenda issued on this project, if applicable.</p> <p>**This is your electronic signature.</p> <p><input type="checkbox"/> I have read and hereby acknowledge. <i>(Required: Check if applicable)</i></p>
----------------	---

Bid Lines

1	<p>Cooperative Contract</p> <p>Item Attributes</p> <p>1. Cooperative Vendor</p> <p>I hereby certify that my Firm/Company is an approved vendor through a Cooperative Contract.</p> <p>A list of approved McAllen ISD coops can be located on our website at https://www.mcallenisd.org/page/cooperative-agreements.</p> <p>***This is your electronic signature.</p> <p><input type="checkbox"/> I have read, understand and hereby certify. <i>(Required: Check if applicable)</i></p> <p>2. Cooperative Contract Name</p> <p>Specify Cooperative Contract name.</p> <p>_____</p> <p>_____</p> <p><i>(Required: Maximum 1000 characters allowed)</i></p> <p>3. Cooperative Contract Number</p> <p>Specify Cooperative Contract number.</p> <p>_____</p> <p>_____</p> <p><i>(Required: Maximum 1000 characters allowed)</i></p> <p>4. Delivery</p> <p>Specify number of days to complete delivery, installation, and training.</p> <p>_____</p> <p>_____</p> <p><i>(Required: Maximum 1000 characters allowed)</i></p>
----------	---

2 **Payment and Performance Bonds**
(Response required)
 Quantity: 1 UOM: EA Price: \$ Total: \$
 Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

3 **Project Inspection, Plan Review**
(Response required)
 Quantity: 1 UOM: EA Price: \$ Total: \$
 Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

4 **Parts List Structure Model #KC12282 Miracle**

5 **Item # 7145039 Deck**
(Response required)
 Quantity: 8 UOM: EA Price: \$ Total: \$
 Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

6 **Item # 714551 5" OD X 106" Post 551 (≤ 2'6" Deck)**
(Response required)
 Quantity: 3 UOM: EA Price: \$ Total: \$
 Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

7 **Item # 714555 5" OD X 76" Fencing & Panels 555**
(Response required)
 Quantity: 2 UOM: EA Price: \$ Total: \$
 Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

8 Item # 714572 5" OD X 144" Roof 572 (≤ 3' Deck)
 (Response required)
 Quantity: 12 UOM: EA Price: \$ Total: \$
 Supplier Notes: _____

No bid
 Additional notes
 (Attach separate sheet)

9 Item # 714576 5" OD X 204" Roof 576 (8' Deck)
 (Response required)
 Quantity: 6 UOM: EA Price: \$ Total: \$
 Supplier Notes: _____

No bid
 Additional notes
 (Attach separate sheet)

10 Item # 7146058 Tree-O Climber
 (Response required)
 Quantity: 1 UOM: EA Price: \$ Total: \$
 Supplier Notes: _____

No bid
 Additional notes
 (Attach separate sheet)

11 Item # 7146702 Chameleon II Slide
 (Response required)
 Quantity: 2 UOM: EA Price: \$ Total: \$
 Supplier Notes: _____

No bid
 Additional notes
 (Attach separate sheet)

12 Item # 7146704 Short Straight Section
 (Response required)
 Quantity: 3 UOM: EA Price: \$ Total: \$
 Supplier Notes: _____

No bid
 Additional notes
 (Attach separate sheet)

13 Item # 7146705 Right Section
 (Response required)
 Quantity: 4 UOM: EA Price: \$ Total: \$
 Supplier Notes: _____

No bid
 Additional notes
 (Attach separate sheet)

1
4 Item #7146706 Left Section
(Response required)

Quantity: 3 UOM: EA Price: \$ Total: \$

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

1
5 Item #714670EZ Entry Section
(Response required)

Quantity: 2 UOM: EA Price: \$ Total: \$

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

1
6 Item #714670LZ Sect Spt Leg 84 1/2"
(Response required)

Quantity: 4 UOM: EA Price: \$ Total: \$

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

1
7 Item #714670PZ Chameleon II Slide
(Response required)

Quantity: 2 UOM: EA Price: \$ Total: \$

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

1
8 Item #7146806C Wave Hex Roof
(Response required)

Quantity: 3 UOM: EA Price: \$ Total: \$

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

1
9 Item #71468610 Alta-Glide Flex Link (1" Deck)
(Response required)

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

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

20 Item #714700 Side-By-Side Slide
(Response required)

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

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

21 Item #71471516 Electronic Piano Panel
(Response required)

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

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

22 Item #714756 Sight -N- Sound Panel
(Response required)

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

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

23 Item #7147632 Tic-Tac-Toe
(Response required)

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

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

24 Item #7147721 Bongo Perch
(Response required)

Quantity: 5 UOM: EA Price: \$ Total: \$

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

25 Item #7147743 Bongo Steps
(Response required)

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

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

26 Item #7148135 Deck Encl
(Response required)

Quantity: 2 UOM: EA Price: \$ Total: \$

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

27 Item #7148161 Wire Mesh Enclosure
(Response required)

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

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

28 Item #714817 Wall W/Bench
(Response required)

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

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

29 Item #7148193D Boulder Ridge 3 Section Grnd to DK
(Response required)

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

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

30 Item #71482315 Power Pedaler, Arms
(Response required)

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

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

31 Item #7148435 Chinning Bar
(Response required)

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

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

3 Item #7148465 Therapeutic Handrings
2 (Response required)
 Quantity: 1 UOM: EA Price: \$ Total: \$
 Supplier Notes: _____

No bid
 Additional notes
 (Attach separate sheet)

3 Item #7148496 Observation DK W/Ext Wheel
3 (Response required)
 Quantity: 1 UOM: EA Price: \$ Total: \$
 Supplier Notes: _____

No bid
 Additional notes
 (Attach separate sheet)

3 Item #71485139 Transfer Point
4 (Response required)
 Quantity: 1 UOM: EA Price: \$ Total: \$
 Supplier Notes: _____

No bid
 Additional notes
 (Attach separate sheet)

3 Item #71487530 30 Deg Look-Out
5 (Response required)
 Quantity: 1 UOM: EA Price: \$ Total: \$
 Supplier Notes: _____

No bid
 Additional notes
 (Attach separate sheet)

3 Item #714920595 PVC Ramp
6 (Response required)
 Quantity: 1 UOM: EA Price: \$ Total: \$
 Supplier Notes: _____

No bid
 Additional notes
 (Attach separate sheet)

3 Item #71492059 PVC Ramp
7 (Response required)
 Quantity: 2 UOM: EA Price: \$ Total: \$
 Supplier Notes: _____

No bid
 Additional notes
 (Attach separate sheet)

38 Item #714961L2 Delight-O-Scope Binoculars
(Response required)

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

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

39 Item #7149831 Marble Race
(Response required)

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

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

40 Item #7149922 Lookout Tower
(Response required)

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

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

41 Item #990027PZ Deck enc
(Response required)

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

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

42 Item #4501 Concerto Tall Chimes
(Response required)

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

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

43 Item #4502 Concerto Vibes
(Response required)

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

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

4 Item #4505 Concerto Spin Cabasas Large
4 (Response required)
 Quantity: 1 UOM: EA Price: \$ Total: \$
 Supplier Notes: _____

 No bid
 Additional notes
 (Attach separate sheet)

4 Item #4507 Concerto 3-Congas
5 (Response required)
 Quantity: 1 UOM: EA Price: \$ Total: \$
 Supplier Notes: _____

 No bid
 Additional notes
 (Attach separate sheet)

4 Item #4533 MM Dynamics Lab
6 (Response required)
 Quantity: 1 UOM: EA Price: \$ Total: \$
 Supplier Notes: _____

 No bid
 Additional notes
 (Attach separate sheet)

4 Item #453704 MM Tranquility Corner Frame
7 (Response required)
 Quantity: 1 UOM: EA Price: \$ Total: \$
 Supplier Notes: _____

 No bid
 Additional notes
 (Attach separate sheet)

4 Item #70471315B TCX Star/Circle Perf Panel (Below Deck)
8 (Response required)
 Quantity: 1 UOM: EA Price: \$ Total: \$
 Supplier Notes: _____

 No bid
 Additional notes
 (Attach separate sheet)

4 Item #70471316B TCX HEX/Triangle Perf Panel (Below Deck)
9 (Response required)
 Quantity: 1 UOM: EA Price: \$ Total: \$
 Supplier Notes: _____

 No bid
 Additional notes
 (Attach separate sheet)

50 Installation of Equipment Only
(Response required)

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

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

51 Synthetic Turf Surfacing System, 2" Pad with Sand Infill Approximately 2,505 sq. ft
(Response required)

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

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

52 Concrete Sidewalk perimeter, 5' wide approximately 1,110 square feet.
(Response required)

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

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

53 Shipping
(Response required)

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

Supplier Notes: _____

No bid
 Additional notes
(Attach separate sheet)

54 Project Timeline

Item Attributes

1. The District has a critical need for substantial completion within 270 days of commencement. Specify the calendar days that you can substantially complete the project.

Projected start date is June 23, 2022, to be completed by March 20, 2023.

(Required: Numbers only)

Supplier Information

Company Name: _____

Contact Name: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

Supplier Notes

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

Print Name

Signature

EXHIBIT B

Contractor's Response Pursuant to RFCQ No. 2022-1054



2022-1054 Addendum 1
Park Place Recreation Designs, Inc.
Supplier Response

Event Information

Number: 2022-1054 Addendum 1
Title: Jose De Escandon Elementary Inclusive Playscape with Synthetic Turf Surfacing
Type: Request for Cooperative Quotes
Issue Date: 5/19/2022
Deadline: 6/2/2022 11:00 AM (CT)
Notes: McAllen Independent School District (the "District") is accepting quotes through Purchasing Cooperative Contracts .

Interested respondents may obtain specifications through IonWave. The District prefers and encourages respondents to submit their proposals electronically through IonWave. Submittals received after this deadline will be void and unacceptable. Facsimile transmittals and/or emailed submittals will not be accepted.

This project is being funded by Community Development Block Grant ("CDBG") funds and is subject to the following Federal requirements: Executive Order 11246; Clause 3 of the HUD Act of 1968; Title IV of the Civil Rights Act of 1964; Title VII of the Civil rights Act of 1968; and Section 109 of the Housing and Community Development Act of 1974.

All respondents shall have current contracts through District-approved Purchasing Cooperatives.

Any questions regarding this solicitation must be submitted through

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

To schedule a campus visit, Melissa Ortiz, Facilities Project Manager via email to melissa.ortiz@mcallenisd.net.

Contact Information

Contact: Graciela Garza Senior Buyer

Address: Purchasing Services

Administration Office

2000 N 23rd St

McAllen, TX 78501-6126

Phone: (956) 657-4487

Fax: (956) 6574481

Email: ggarza@mcallenisd.net

Park Place Recreation Designs, Inc. Information

Contact: Andrew Ahrens
Address: 4225 Woodburn Dr. (P. O. Box 18186 San Antonio TX 78218)
San Antonio, TX 78218
Phone: (210) 821-5878
Fax: (210) 832-0115
Toll Free: (800) 626-0238
Email: andy@miracleparkplace.com
Web Address: www.miracleparkplace.com

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

Marilyn Ahrens

Signature

Submitted at 6/1/2022 9:07:18 AM

marilyn@miracleparkplace.com

Email

Requested Attachments

Completed W9 Form

2022 Form W-9.pdf

Please upload your completed W9 form.

Assumed Name Certificate

No response

Upload your Assumed Name Certificate (if applicable).

Proof of Insurance (Acord Certificate of Insurance Form)

2022 COI - McAllen ISD Escandon ES.pdf

Please upload your certificate of insurance in Acord form.

Completed Conflict of Interest Questionnaire.

2022.06.01 Form CIQ McAllen ISD 2022-1054 Addendum 1.pdf

Please upload your completed CIQ.

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

HUB Certificate

PPRD 2021 SCTRCA ESBE SBE Certification.pdf

Upload your HUB Certificate, if applicable.

Completed Form 1295 Form or Exemption Statement

2022.06.01 Form 1295 McAllen ISD 2022-1054 Addendum 1.pdf

Please upload your completed 1295 Form.

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

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

Response Attachments

McAllen ISD 2022-1054 Addendum 1 Escandon ES.pdf

Proposal attachment. Please note: (2) benches included in our proposal are not shown in the lonwave online bid Line Items section. We've included the discounted price of these benches (\$900.00) in the Line Item 50 installation amount.

Bid Attributes

1	General Terms and Conditions Please download and read the General Terms and Conditions for this solicitation. Acknowledge you have read, understand and accept the general terms and conditions. **This is your electronic signature. <input checked="" type="checkbox"/> I have read, understand and accept. (I have read, understand and accept.)
2	Specifications and Scope of Work Please download and read the Specifications and Scope of Work for this solicitation. Acknowledge you have read, understand and accept the specifications and scope of work. **This is your electronic signature. <input checked="" type="checkbox"/> I hereby acknowledge. (I hereby acknowledge.)
3	Deviations and Exceptions If your company intends to deviate from the Specifications listed in the solicitation attached documents, all such deviations and exceptions must be listed here, with complete and detailed conditions and information included. The District reserves the right to accept or reject any proposals based upon any deviations indicated below. If none, enter N/A (Not Applicable). <input type="text" value="N/A"/>
4	Form 1295 - Certificate of Interested Parties The Texas Government Code §2252.908, and the rules issued by the Texas Ethics Commission found in Title 1, Sections 46.1, 46.3 and 46.5 of the Texas Administrative Code, require a business entity to submit a completed Form 1295 before the District may enter into a contract with that business entity. Form 1295 must be submitted with your proposal and is required as condition of award. Form must be completed online. Access form at: <ul style="list-style-type: none">• http://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm• Complete the form• Enter solicitation number and name• Print and sign form• Attach form on "Response Attachments" tab If exempt, attach documentation. <input checked="" type="checkbox"/> I have read and understand. (I have read and understand.)
5	Delinquent Taxpayers In accordance with law, the District shall not enter into a contract or other transaction with a person indebted to the District, nor shall the District award a contract to or enter into a transaction with any proposer indebted to the District. **This is your electronic signature. <input type="text" value="I am NOT a delinquent taxpayer to McAllen ISD"/>
6	Provide the business name as it is registered with the Texas Comptroller, or similar. *Note: the name must match IRS registration and W-9 form. <input type="text" value="N/A"/>

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

- Yes (upload Assumed Name Certificate) (Yes (upload Assumed Name Certificate))
- No (No)

8 Felony Conviction Notification

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

Select where applicable:

- A. My company is a publicly held corporation; therefore, this reporting requirement is not applicable.
- B. My company is not owned nor operated by anyone who has been convicted of a felony.
- C. My company is owned and operated by an individual who has/have been convicted of a felony.

**This is your electronic signature.

9 Felony Conviction Details

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

1
0

Criminal History Record Information Review of Certain Contract Employees

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

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

OR

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

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

**This is your electronic signature.

A. None - I hereby agree and certify.

1
1

Confidential/Copyrighted Information

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

**This is your electronic signature.

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

1 2	<p>Declaration of Business Location - Texas Education Code 44.031(b)(8)</p> <p>Bidder certifies the Bidder's or the Bidder's ultimate parent company or majority owner:</p> <p>A. Has its principal place of business in the State of Texas; OR B. Employs at least 500 persons in the State of Texas C. Principal place of business is not in the State of Texas.</p> <p>**This is your electronic signature.</p> <p><input type="text" value="A. Principal place of business is in TX"/></p>
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1 3	<p>Declaration of Business Location - Texas Education Code 44.031(b)(8)</p> <p>Specify principal place of business (City/State).</p> <p>If not applicable, please enter N/A (not applicable).</p> <p>***This is your electronic signature.</p> <p><input type="text" value="San Antonio, TX"/></p>
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1 4	<p>Prohibition on Contracts with Companies Boycotting Certain Energy Companies (SB 13)</p> <p>If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies by submitting its proposal that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.</p> <p>**This is your electronic signature.</p> <p><input checked="" type="checkbox"/> I have read and hereby certify. (I have read and hereby certify.)</p>
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1 5	<p>Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries (SB 19)</p> <p>If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies by submitting its proposal that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association.</p> <p>**This is your electronic signature.</p> <p><input checked="" type="checkbox"/> I have read and hereby certify. (I have read and hereby certify.)</p>
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6 **Entities That Boycott Israel**

If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required.

Pursuant to Chapter 2270 of the Texas Government Code, the Vendor hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Vendor, if any (the "Vendor Companies"), boycotts Israel, and the Vendor agrees that the Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

**This is your electronic signature.

I agree and hereby certify. (I agree and hereby certify.)

1
7 **TEXAS GOVERNMENT CODE Sec. 2252.152. CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION PROHIBITED.**

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

**This is your electronic signature.

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

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8 **TEXAS GOVERNMENT CODE Sec. 2252.153. LISTED COMPANIES**

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

Vendor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State.

**This is your electronic signature.

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

1
9 **Non-Collusion Statement**

Vendor certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or business or legal entity.

**This is your electronic signature.

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

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Contracts in Excess of \$250,000

Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**This is your electronic signature.

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

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Contracts in Excess of \$10,000

All contracts in excess of \$10,000 must address termination for cause and for convenience including the manner by which it will be affected and the basis for settlement.

**This is your electronic signature.

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

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Equal Employment Opportunity

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

**This is your electronic signature.

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

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Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146- 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non- Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**This is you electronic signature.

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

24 Contract Work Hours and Safety Standards Acts (40 U.S.C. 3701-3708)

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**This is your electronic signature.

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

25 Rights to Inventions Made Under a Contract or Agreement

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

**This is your electronic signature.

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

26 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended

Contracts and subgrants of amounts in excess of \$250,000 must contain a provision that requires the award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**This is your electronic signature.

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

27 (H) Debarment and Suspension (Executive Orders 12549 and 12689)

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

Pursuant to Federal Rule (H) above, when federal funds are expended by the District, the vendor certifies that during the term of an award for all contracts by the District resulting from this procurement process, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas. Vendor shall immediately provide written notice to the District if at any time the vendor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The District may rely upon a certification of a vendor that the vendor is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless the District knows the certification is erroneous.

**This is your electronic signature.

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

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Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

Contractors that apply or submit an offer for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the award.

**This is your electronic signature.

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

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

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

**This is your electronic signature.

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

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

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

**This is your electronic signature.

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

3 1 2 C.F.R. § 200.322 CERTIFICATION OF DOMESTIC PREFERENCES FOR PROCUREMENTS AND COMPLIANCE WITH BUY AMERICA PROVISIONS

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

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

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

**This is your electronic signature.

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

3 2 2 C.F.R § 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms

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

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

**This is your electronic signature.

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

3 3 Texas Historically Underutilized Businesses (HUB) – Texas Education Code 44.031(b)(6) or Small and Minority Firms, Women's Business Enterprises, & Labor Surplus Area Firms

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

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

**This is your electronic signature.

3 4 2 C.F.R § 200.334 RECORDS RETENTION REQUIREMENTS

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

**This is your electronic signature.

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

3 5 Buy American Provision

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

**This is your electronic signature.

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

3 6 Federally Funded Purchases

Contractor certifies that Contractor is in compliance with all applicable provisions for federally funded purchases.

**This is your electronic signature.

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

3 7 Addendum

Bidder/Respondent acknowledges that he/she will download and review all addenda issued on this project, if applicable.

**This is your electronic signature.

I have read and hereby acknowledge. (I have read and hereby acknowledge.)

Bid Lines

1 Cooperative Contract

Item Attributes

1. Cooperative Vendor

I hereby certify that my Firm/Company is an approved vendor through a Cooperative Contract.

A list of approved McAllen ISD coops can be located on our website at <https://www.mcallenisd.org/page/cooperative-agreements>.

***This is your electronic signature.

I have read, understand and hereby certify. (I have read, understand and hereby certify.)

2. Cooperative Contract Name

Specify Cooperative Contract name.

Texas Association of School Boards, Inc. (BuyBoard)

3. Cooperative Contract Number

Specify Cooperative Contract number.

592-19 Parks and Recreation Equipment and Field Lighting Products

4. Delivery

Specify number of days to complete delivery, installation, and training.

270

2 Payment and Performance BondsQuantity: 1 UOM: EA Price: Total: **3 Project Inspection, Plan Review**Quantity: 1 UOM: EA Price: Total: **4 Parts List Structure Model #KC12282 Miracle****5 Item # 7145039 Deck**Quantity: 8 UOM: EA Price: Total: **6 Item # 714551 5" OD X 106" Post 551 (≤ 2'6" Deck)**Quantity: 3 UOM: EA Price: Total: **7 Item # 714555 5" OD X 76" Fencing & Panels 555**Quantity: 2 UOM: EA Price: Total: **8 Item # 714572 5" OD X 144" Roof 572 (≤ 3' Deck)**Quantity: 12 UOM: EA Price: Total: **9 Item # 714576 5" OD X 204" Roof 576 (8' Deck)**Quantity: 6 UOM: EA Price: Total: **10 Item # 7146058 Tree-O Climber**Quantity: 1 UOM: EA Price: Total: **11 Item # 7146702 Chameleon II Slide**Quantity: 2 UOM: EA Price: Total: **12 Item # 7146704 Short Straight Section**Quantity: 3 UOM: EA Price: Total: **13 Item # 7146705 Right Section**Quantity: 4 UOM: EA Price: Total: **14 Item # 7146706 Left Section**Quantity: 3 UOM: EA Price: Total:

1 5	Item #714670EZ Entry Section	Quantity: <u> 2 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$0.00"/>	Total: <input type="text" value="\$0.00"/>
1 6	Item #714670LZ Sect Spt Leg 84 1/2"	Quantity: <u> 4 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$0.00"/>	Total: <input type="text" value="\$0.00"/>
1 7	Item #714670PZ Chameleon II Slide	Quantity: <u> 2 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$0.00"/>	Total: <input type="text" value="\$0.00"/>
1 8	Item #7146806C Wave Hex Roof	Quantity: <u> 3 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$3,297.00"/>	Total: <input type="text" value="\$9,891.00"/>
1 9	Item #71468610 Alta-Glide Flex Link (1" Deck)	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$15,284.25"/>	Total: <input type="text" value="\$15,284.25"/>
2 0	Item #714700 Side-By-Side Slide	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$1,485.75"/>	Total: <input type="text" value="\$1,485.75"/>
2 1	Item #71471516 Electronic Piano Panel	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$2,027.25"/>	Total: <input type="text" value="\$2,027.25"/>
2 2	Item #714756 Sight -N- Sound Panel	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$2,164.25"/>	Total: <input type="text" value="\$2,164.25"/>
2 3	Item #7147632 Tic-Tac-Toe	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$1,084.50"/>	Total: <input type="text" value="\$1,084.50"/>
2 4	Item #7147721 Bongo Perch	Quantity: <u> 5 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$186.75"/>	Total: <input type="text" value="\$933.75"/>
2 5	Item #7147743 Bongo Steps	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$1,125.75"/>	Total: <input type="text" value="\$1,125.75"/>
2 6	Item #7148135 Deck Encl	Quantity: <u> 2 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$434.25"/>	Total: <input type="text" value="\$868.50"/>
2 7	Item #7148161 Wire Mesh Enclosure	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$348.75"/>	Total: <input type="text" value="\$348.75"/>
2 8	Item #714817 Wall W/Bench	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$739.50"/>	Total: <input type="text" value="\$739.50"/>
2 9	Item #7148193D Boulder Ridge 3 Section Grnd to DK	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$3,727.50"/>	Total: <input type="text" value="\$3,727.50"/>
3 0	Item #71482315 Power Pedaler, Arms	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$830.25"/>	Total: <input type="text" value="\$830.25"/>

3 1	Item #7148435 Chinning Bar	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$145.50"/>	Total: <input type="text" value="\$145.50"/>
3 2	Item #7148465 Therapeutic Handrings	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$409.50"/>	Total: <input type="text" value="\$409.50"/>
3 3	Item #7148496 Observation DK W/Ext Wheel	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$1,146.75"/>	Total: <input type="text" value="\$1,146.75"/>
3 4	Item #71485139 Transfer Point	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$2,591.25"/>	Total: <input type="text" value="\$2,591.25"/>
3 5	Item #71487530 30 Deg Look-Out	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$859.50"/>	Total: <input type="text" value="\$859.50"/>
3 6	Item #714920595 PVC Ramp	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$3,527.25"/>	Total: <input type="text" value="\$3,527.25"/>
3 7	Item #71492059 PVC Ramp	Quantity: <u> 2 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$3,136.50"/>	Total: <input type="text" value="\$6,273.00"/>
3 8	Item #714961L2 Delight-O-Scope Binoculars	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$519.00"/>	Total: <input type="text" value="\$519.00"/>
3 9	Item #7149831 Marble Race	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$1,576.50"/>	Total: <input type="text" value="\$1,576.50"/>
4 0	Item #7149922 Lookout Tower	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$876.00"/>	Total: <input type="text" value="\$876.00"/>
4 1	Item #990027PZ Deck enc	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$0.00"/>	Total: <input type="text" value="\$0.00"/>
4 2	Item #4501 Concerto Tall Chimes	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$3,915.75"/>	Total: <input type="text" value="\$3,915.75"/>
4 3	Item #4502 Concerto Vibes	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$3,903.75"/>	Total: <input type="text" value="\$3,903.75"/>
4 4	Item #4505 Concerto Spin Cabasas Large	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$970.50"/>	Total: <input type="text" value="\$970.50"/>
4 5	Item #4507 Concerto 3-Congas	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$1,914.00"/>	Total: <input type="text" value="\$1,914.00"/>
4 6	Item #4533 MM Dynamics Lab	Quantity: <u> 1 </u> UOM: <u>EA</u>	Price: <input type="text" value="\$4,635.00"/>	Total: <input type="text" value="\$4,635.00"/>

47	Item #453704 MM Tranquility Corner Frame Quantity: <u> 1 </u> UOM: <u>EA</u> Price: <input type="text" value="\$1,037.50"/> Total: <input type="text" value="\$1,037.50"/>
48	Item #70471315B TCX Star/Circle Perf Panel (Below Deck) Quantity: <u> 1 </u> UOM: <u>EA</u> Price: <input type="text" value="\$1,161.75"/> Total: <input type="text" value="\$1,161.75"/>
49	Item #70471316B TCX HEX/Triangle Perf Panel (Below Deck) Quantity: <u> 1 </u> UOM: <u>EA</u> Price: <input type="text" value="\$1,161.75"/> Total: <input type="text" value="\$1,161.75"/>
50	Installation of Equipment Only Quantity: <u> 1 </u> UOM: <u>EA</u> Price: <input type="text" value="\$32,850.00"/> Total: <input type="text" value="\$32,850.00"/>
51	Synthetic Turf Surfacing System, 2" Pad with Sand Infill Approximately 2,505 sq. ft Quantity: <u> 1 </u> UOM: <u>EA</u> Price: <input type="text" value="\$39,178.20"/> Total: <input type="text" value="\$39,178.20"/>
52	Concrete Sidewalk perimeter, 5' wide approximately 1,110 square feet. Quantity: <u> 1 </u> UOM: <u>EA</u> Price: <input type="text" value="\$11,377.50"/> Total: <input type="text" value="\$11,377.50"/>
53	Shipping Quantity: <u> 1 </u> UOM: <u>EA</u> Price: <input type="text" value="\$4,770.00"/> Total: <input type="text" value="\$4,770.00"/>
54	Project Timeline Item Attributes 1. The District has a critical need for substantial completion within 270 days of commencement. Specify the calendar days that you can substantially complete the project. Projected start date is June 23, 2022, to be completed by March 20, 2023. <input type="text" value="270"/>

Response Total: \$199,976.20

From: [Bob Ahrens](#)
To: [CABRERA, ELIZABETH - DEPT OF PURCHASING SERVICES](#)
Cc: [QUINTANILLA, CAROLINA - DEPT OF PURCHASING SERVICES](#); [GARZA, GRACIELA - DEPT OF PURCHASING SERVICES](#); [GONZALEZ, ALEJANDRA - DISTRICT OPERATIONS](#); [TREVINO, RUBEN - DEPT OF FMO](#)
Subject: [EXTERNAL] Re: [EXTERNAL] Escandon Playground
Date: Friday, June 17, 2022 10:20:22 AM

Good morning,

Please regard this email acknowledging our understanding that the date to complete this contract is January 31, 2023, providing there are no manufacturer delays.

Thanks,

Bob

Robert K. Ahrens
President
Park Place Recreation Designs, Inc.
Cell: 210-416-6482
www.miracleparkplace.com
bob@miracleparkplace.com

On Jun 16, 2022, at 6:09 PM, CABRERA, ELIZABETH - DEPT OF PURCHASING SERVICES <Elizabeth.Cabrera@mcallenisd.net> wrote:

Good afternoon Mr. Ahrens,
We are in receipt of the email below. Please confirm the date to complete this contract is January 31, 2023.

Note: Our office will be closed from June 24 through July 8, 2022 for Summer break. We will be open for business on Monday, July 11, 2022.

Thank you,

Elizabeth Cabrera
Coordinator for Purchasing Services
McAllen Independent School District
elizabeth.cabrera@mcallenisd.net
T: 956.657-4480 F: 956.657-4481
<image001.png>

MCALLEN ISD NEW VENDOR REGISTRATION!

McAllen ISD Purchasing Services is pleased to announce that we will be transitioning to a NEW bidding portal.

Current and new vendors interested in doing business with McAllen ISD must register in order to receive bid notifications. Interested vendors may register online by visiting: <https://mcallenisd.ionwave.net/Login.aspx>

From: TREVINO, RUBEN - DEPT OF FMO <Ruben.Trevino@mcallenisd.net>
Sent: Thursday, June 16, 2022 3:35 PM
To: CABRERA, ELIZABETH - DEPT OF PURCHASING SERVICES
<Elizabeth.Cabrera@mcallenisd.net>
Cc: GONZALEZ, ALEJANDRA - DISTRICT OPERATIONS
<Alejandra.Gonzalez@mcallenisd.net>; GARZA, GRACIELA - DEPT OF PURCHASING SERVICES <ggarza@mcallenisd.net>
Subject: Fw: [EXTERNAL] Escandon Playground

As per your request.

From: Bob Ahrens <bob@miracleparkplace.com>
Sent: Thursday, June 16, 2022 3:29 PM
To: TREVINO, RUBEN - DEPT OF FMO <Ruben.Trevino@mcallenisd.net>
Subject: [EXTERNAL] Escandon Playground

Good afternoon Mr. Trevino,

Per our discussion and reviewing this project, we feel that we will be able to complete it within the contract period discussed, providing there are no manufacturer related delays.

We appreciate working with you and your District.

Thanks,

Bob

Bob Ahrens
Cell: 210-416-6482
Sent from my iPhone

The McAllen Independent School District prohibits discrimination, including harassment, against any employee/student on the basis of race, color, religion, gender, national origin, age, disability, or any other basis prohibited by law. Retaliation against anyone involved in the complaint process is a violation of District Policy and is prohibited. McAllen ISD is an equal opportunity provider. The following person has been designated to handle inquiries regarding this subject:

John L. Wilde, john.wilde@mcallenisd.net<mailto:> , Director for Student Support Services, Title IX Coordinator (Students and Employees) , 2200 Tamarack Ave. Portable 69 , McAllen, TX - 78501 (956) 618-6031

EXHIBIT C
Federal Provisions

**Exhibit C
Federal Provisions**

Felony Conviction Notification

Texas Education Agency Code, Section 44.034, Notification of Criminal History, Subsection (a), states, "A person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony." Subsection (b) states, "A school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract."

Criminal History Record Information Review of Certain Contract Employees

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

Confidential/Copyrighted Information

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

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

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

Delinquent Taxpayers

In accordance with law, the District shall not enter into a contract or other transaction with a person indebted to the District, nor shall the District award a contract to or enter into a transaction with an apparent low Contractor or successful proposer indebted to the District.

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

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

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

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

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

If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies by submitting its proposal that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association

Entities That Boycott Israel:

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

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

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

Secretary of State.

Sec. 2252.153. LISTED COMPANIES.

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

Sec. 2252.154. EXCEPTION.

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

Vendor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State

Non-Collusion Statement

Vendor certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or business or legal entity.

Federally Funded Purchases

By signing below, Contractor certifies that Contractor is in compliance with all applicable provisions for federally funded purchases (see attached "Federally Funded Purchases" form).

Contract Provisions for contracts under Federal Awards – Contractor agrees to comply with the following provisions.

Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

All contracts in excess of \$10,000 must address termination for cause and for convenience including the manner by which it will be affected and the basis for settlement.

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

Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146- 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti- Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or sub recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or sub recipient

must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and sub grants of amounts in excess of \$250,000 must contain a provision that requires the award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

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

- Pursuant to Federal Rule (H) above, when federal funds are expended by the District, the vendor certifies that during the term of an award for all contracts by the District resulting from this procurement process, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas. Vendor shall immediately provide written notice to the District if at any time the vendor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The District may rely upon a certification of a vendor that the vendor is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless the District knows the certification is erroneous.

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or submit an offer for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the award.

2 C.F.R. § 200.323 PROCUREMENT OF RECOVERED MATERIALS. An entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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

The District, as a non-federal entity, is prohibited from obligating or expending Federal financial assistance, to include loan or grant funds, to: (1) procure or obtain, (2) extend or renew a contract to procure or obtain, or (3) enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system. Covered telecommunications equipment is telecommunications equipment produced Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities) and physical security surveillance of critical infrastructure and other national security purposes, and video

surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) for the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes detailed in 2 CFR § 200.216. The vendor shall certify that they will not purchase equipment, services, or systems that use covered telecommunications, as defined herein, as a substantial or essential component of any system, or as critical technology as part of any system.

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

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

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

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

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

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

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

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

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

EXHIBIT D
Contractor's Insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/31/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

Table with PRODUCER (Trimble-Batjer Insurance Associates LLP), CONTACT NAME (Susan Muñiz), INSURER(S) AFFORDING COVERAGE (The Cincinnati Specialty Underwriters Insurance Company, The Cincinnati Insurance Company, Texas Mutual Insurance Company), and INSURED (Park Place Recreation Designs, Inc.).

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES.

Main table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Includes rows for Commercial General Liability, Automobile Liability, Umbrella Liab, Workers Compensation, and Installation Floater.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) See 2nd page for special provisions

RE: RCQ 2022-1054 Jose De Escandon Elementary Inclusive Playscape with Synthetic Turf Surfacing

Table with CERTIFICATE HOLDER (McAllen Independent School District) and CANCELLATION (Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Includes signature of authorized representative).



ADDITIONAL REMARKS SCHEDULE

AGENCY Trimble-Batjer Insurance Associates LLP		NAMED INSURED Park Place Recreation Designs, Inc. P.O. Box 18186 San Antonio, TX 78218	
POLICY NUMBER SEE PAGE 1			
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Special Provisions

General Liability and Auto policies include blanket additional insured endorsement, with general liability including products/completed operations, and primary and non-contributory coverage, and General Liability, Auto and Workers' Compensation include a blanket waiver of subrogation endorsement all in favor of any person or organization as required by signed, written contract.

WE HAVE ISSUED AN INDUSTRY STANDARD ACORD CERTIFICATE OF INSURANCE FOR OUR CUSTOMER. A LAW PASSED BY THE TEXAS LEGISLATURE EFFECTIVE JANUARY 1, 2012 (SENATE BILL 425) PROHIBITS US FROM ADDING SPECIAL WORDING TO THE CERTIFICATE THAT WOULD (1)ALTER, AMEND OR EXTEND COVERAGE OR TERMS AND CONDITIONS PROVIDED BY THE INSURANCE POLICY; AND (2)PROVIDE FALSE OR MISLEADING INFORMATION CONCERNING THE INSURANCE POLICY; OR (3) REFER TO A LEGAL OR INSURANCE REQUIREMENT CONTAINED IN A CONTRACT.

EXHIBIT E

Payment and Performance Bonds

SureTec Insurance Company

2103 CityWest Boulevard, Suite 1300
Houston, TX 77042
(713) 812-0800

TEXAS STATUTORY PAYMENT BOND

(Public Works)

Bond No.: 4427140

KNOW ALL MEN BY THESE PRESENTS:

THAT, Park Place Recreation Designs, Inc. (hereinafter called the Principal), as principal, and SureTec Insurance Company, a corporation organized and existing under the laws of the State of Texas, licensed to do business in the State of Texas and admitted to write bonds, as surety, (hereinafter called the Surety), are held and firmly bound unto McAllen Independent School District (hereinafter called the Obligee), in the amount of One Hundred Ninety Nine Thousand Nine Hundred Seventy-Six Dollars and 20/100-- Dollars (\$199,976.20) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain contract with the Obligee, dated the 3rd day of June, 2022 for Contract 2022-194 Park Place Recreation Design, Inc. through RFCQ 2022-1054, Jose De Escandon Elementary Inclusive Playscape with Synthetic Turf Surfacing, which contract is hereinafter referred to as the "Contract."

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said Contract, then, this obligation shall be null and void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code and all liabilities on this bond shall be determined in accordance with the provision, conditions and limitations of said Chapter to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 6th day of June, 2022.

Principal: Park Place Recreation Designs, Inc.

By: 

Surety: **SureTec Insurance Company**

By: 
Tammy A. Friddle, Attorney-in-Fact

The Rider Attached Hereto Is Incorporated in this Bond and Contains Important Coverage Information

SureTec Insurance Company

2103 CityWest Boulevard, Suite 1300
Houston, TX 77042
(713) 812-0800

TEXAS STATUTORY PERFORMANCE BOND

Bond No.: 4427140

KNOW ALL MEN BY THESE PRESENTS:

THAT, Park Place Recreation Designs, Inc. (hereinafter called the Principal, and **SureTec Insurance Company**, a corporation organized and existing under the laws of the State of Texas, licensed to do business in the State of Texas and admitted to write bonds, as surety, (hereinafter called the Surety), are held and firmly bound unto McAllen Independent School District (hereinafter called the Obligee), in the amount of One Hundred Ninety Nine Thousand Nine Hundred Seventy-Six Dollars and 20/100-- Dollars (\$199,976.20) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

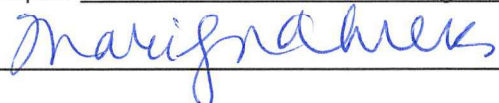
WHEREAS, the Principal has entered into a certain contract with the Obligee, dated the 3rd day of June, 2022 for Contract 2022-194 Park Place Recreation Design, Inc. through RFCQ 2022-1054, Jose De Escandon Elementary Inclusive Playscape with Synthetic Turf Surfacing, which contract is hereinafter referred to as the "Contract."

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform the work required by the Contract then this obligation shall be null and void; otherwise to remain in full force and effect;


PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code and all liabilities on this bond shall be determined in accordance with the provision, conditions and limitations of said Chapter to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 6th day of June, 2022.

Principal: Park Place Recreation Designs, Inc.

By: 

Surety: **SureTec Insurance Company**

By: 
Tammy A. Friddle, Attorney-in-Fact

The Rider Attached Hereto Is Incorporated in this Bond and Contains Important Coverage Information

JOINT LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That SureTec Insurance Company, a Corporation duly organized and existing under the laws of the State of Texas and having its principal office in the County of Harris, Texas and Markel Insurance Company (the "Company"), a corporation duly organized and existing under the laws of the state of Illinois, and having its principal administrative office in Glen Allen, Virginia, does by these presents make, constitute and appoint:

Paul G. Adam, Peter S. Batjer, Joseph P. O'Connor, Lisa W. Friend, Susan D.B. Muniz, Alan N. Sisk, Marci James, Shannon Dunaway, Tammy A. Friddle

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on their own behalf, individually as a surety or jointly, as co-sureties, and as their act and deed any and all bonds and other undertaking in suretyship provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

Ten Million and 00/100 Dollars (\$10,000,000.00)

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolutions adopted by the Board of Directors of SureTec Insurance Company and Markel Insurance Company:

"RESOLVED, That the President, Senior Vice President, Vice President, Assistant Vice President, Secretary, Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the SureTec Insurance Company and Markel Insurance Company, as the case may be, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, Markel Insurance Company and SureTec Insurance Company have caused their official seal to be hereunto affixed and these presents to be signed by their duly authorized officers on the 18th day of May, 2022.

SureTec Insurance Company

By: 
Michael C. Keimig, President



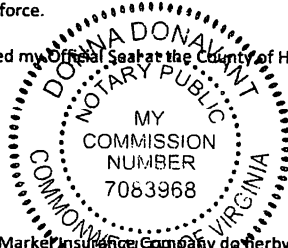
Markel Insurance Company

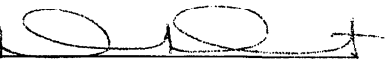
By: 
Robin Russo, Senior Vice President

Commonwealth of Virginia
County of Henrico SS:

On this 18th day of May, 2022 A. D., before me, a Notary Public of the Commonwealth of Virginia, in and for the County of Henrico, duly commissioned and qualified, came THE ABOVE OFFICERS OF THE COMPANIES, to me personally known to be the individuals and officers described in, who executed the preceding instrument, and they acknowledged the execution of same, and being by me duly sworn, disposed and said that they are the officers of the said companies aforesaid, and that the seals affixed to the proceeding instrument are the Corporate Seals of said Companies, and the said Corporate Seals and their signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of the said companies, and that Resolutions adopted by the Board of Directors of said Companies referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Henrico, the day and year first above written.

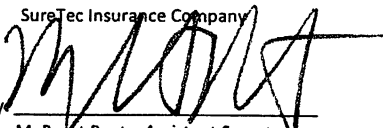


By: 
Donna Donavant, Notary Public
My commission expires 1/31/2023

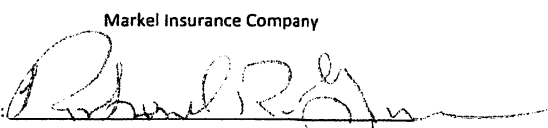
We, the undersigned Officers of SureTec Insurance Company and Markel Insurance Company, do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the 6th day of June, 2022.

SureTec Insurance Company

By: 
M. Brent Beaty, Assistant Secretary

Markel Insurance Company

By: 
Richard R. Grinnan, Vice President and Secretary

SureTec Insurance Company

IMPORTANT NOTICE Statutory Complaint Notice/Filing of Claims

To obtain information or make a complaint: You may call the Surety's toll free telephone number for information or to make a complaint or file a claim at: 1-866-732-0099. You may also write to the Surety at:

SureTec Insurance Company
9737 Great Hills Trail, Suite 320
Austin, TX 78759

You may contact the Texas Department of Insurance to obtain information on companies, coverage, rights or complaints at 1-800-252- 3439. You may write the Texas Department of Insurance at:

PO Box 149104
Austin, TX 78714-9104
Fax#: 512-490-1007
Web: <http://www.tdi.texas.gov>
Email: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIMS DISPUTES: Should you have a dispute concerning your premium or about a claim, you should contact the Surety first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

SUBMITTED BY: *Maira Garcia*
Maira Garcia (May 3, 2023 14:45 CDT)

SUPERVISOR: *Rosalba De Hoyos*

Approved for presentation to the Board of Education:

J. X. O'Connell

147
Superintendent of Schools May 3, 2023

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Survey Pre-Work:

TEKS Certification 2023–24 Form

In accordance with [Texas Education Code §31.004](#), local education agencies (LEAs) are required to certify annually to the State Board of Education (SBOE) and the commissioner that students have access to instructional materials covering all Texas Essential Knowledge and Skills (TEKS) for all required subjects, except physical education.

Additionally, in accordance with Texas Administrative Code [19 TAC §66.105](#), LEAs are required to certify that they protect against access to obscene or harmful content in compliance with the requirements for certification under the Children's Internet Protection Act, 47 USC §254(h)(5)(B) and (C). The TEKS Certification 2023–24 Survey includes a section to allow LEAs to certify they meet this requirement.

In response to feedback from last year's process, the agency refined the TEKS Certification Process and will utilize the following tools:

TEKS Certification 2023-24 Form:

Printable, hard copy of the survey to be completed offline and presented to the board of trustees or governing body for ratification and signatures.

TEKS Certification 2023-24 Survey:

Web-based application where LEAs will submit their responses, collected on the TEKS Certification 2023-24 Form, and where LEAs will upload the signature page of the Form.

This year's TEKS Certification Process requires:

- The completion of the TEKS Certification 2023-24 Form,
- Ratification by the LEA's board of trustees or governing body in an open, public-noticed meeting; and
- Submission of the TEKS Certification 2023-24 Survey and upload of the signature page of the ratified TEKS Certification 2023-24 Form.

TEA recommends that LEAs complete these steps by **May 1, 2023**. The TEKS Certification 2023-24 Survey can be accessed beginning on March 20, 2023, on the [Instructional Materials webpage](#).

The state online instructional materials ordering system, EMAT, will close for annual maintenance on March 31, 2023, and is scheduled to reopen on May 15, 2023. **Completion of the TEKS Certification Process is required to regain access to allotment funds when EMAT reopens in May of 2023.**

TEKS Certification 2023–24 Survey submissions received after May 15, 2023, will typically be processed within five business days, then access to EMAT provided.

Instructions to Complete the TEKS Certification Process for 2023-24

1. **Review the TEKS Certification 2023-24 Form.**
2. **Gather information:** The form may require consultation with content area leads or other LEA staff.
3. **Complete TEKS Certification 2023-24 Form:** Complete the TEKS Certification 2023–24 Form by hand or digitally.
4. **Obtain needed signatures:** Ratify the **TEKS Certification 2023-24 Form** by the LEA's board of trustees or governing body in an upcoming, open board meeting.
5. **Submit TEKS Certification 2023-24 Survey:** Complete the online TEKS Certification 2023–24 Survey by answering the questions. Inside the survey you will upload the signature page of the signed Allotment and TEKS

Certification 2023–24 Form from Step 4. The survey will be open for submissions beginning Monday, March 20, 2023, and will be located on the [Instructional Materials website](#).

Additional Supports

- The TEA will be hosting a webinar to review the TEKS Certification 2023–24 Process on *Monday, March 20, at 2:00 p.m. CDT*. You can find the registration link [here](#).
- The TEA will host office hours on *Tuesday, March 28, at 11:00 a.m. CDT*. Registration link for office hours can be found [here](#).
- For questions about the TEKS Certification 2023–24 form, survey, or process, please submit a [Help Desk ticket](#).

Review Terminology

Additional Supports

- **Scope and Sequence:** A document that provides a brief outline of the standards and a recommended teaching order for a particular course/grade-level over the course of a school year.
- **Full-subject materials** (often referred to as Tier 1 or core materials): Full sets of materials designed to provide the teacher with everything needed to cover 100% of the Texas Essential Knowledge and Skills (TEKS) in a grade level/band, including scope and sequence, daily lesson plans, and student materials.
- **Supplemental materials** (may be used in Tier 1, Tier 2, or Tier 3 settings): Materials not designed to cover 100% of the TEKS but designed to complement, enrich, and/or extend supports in a particular subject and/or grade band.

About the Qualtrics Survey

Within the Qualtrics survey, you will be given a list of commonly known publishers and products. Should your district use a district-developed product, or the product is not listed, you will be asked to write in the name of the publisher and product.

TEKS Certification 2023–24 Form

Background Information

QUESTION 1.0: Name of person completing this form

Maira Garcia

QUESTION 1.1: Your email address

Maira.garcia@mcallenisd.net

QUESTION 1.2: Select the role that best describes your position at your district or charter: [Single Select]

- Instructional Material Coordinator
- Curriculum Director
- Principal
- Administrative Assistant
- Superintendent
- Other

LEA Information

QUESTION 2.0: Region #

1

QUESTION 2.1: District or Charter Name and County District Number

108906

QUESTION 2.2: Superintendent's Name

Dr. Jose A. Gonzalez

QUESTION 2.3: Superintendent's email address

Jose.gonzalez@mcallenisd.net

QUESTION 2.4: School board president's or governing body's name

Tony Forina

QUESTION 2.5: School board president's or governing body's email address

Tony.forina@mcallenisd.net

QUESTION 2.6: Date of the school board meeting at which the TEKS Certification Form was presented and approved

May 8, 2023

Reading Language Arts TEKS Certification

Scope and Sequence - All Grade Levels RLA

QUESTION 3.0: Do you manage the scope and sequence of your reading language arts content at a LEA (district or charter) level? Please indicate your LEA’s approach to managing the scope and sequence of the reading language arts content in each of the following grade bands. [Single select for each grade band]

		Do not manage scope and sequence at a LEA level	Use product-specific scope and sequence	Use LEA-developed scope and sequence	Use Texas Resource System (TRS) scope and sequence	N/A
QUESTION 3.1:	Kindergarten – 2 nd Grade	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
QUESTION 3.2:	3 rd –5 th Grade	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
QUESTION 3.3:	6 th –8 th Grade	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
QUESTION 3.4:	9 th - 12 th Grade	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

English Reading Language Arts K-5 TEKS Coverage Certification

QUESTION 4.0: For school year 23–24 will your LEA make materials available for use that cover 100% of the **K–5 English RLA TEKS**? (This includes teacher- or LEA-developed materials. You may select "yes" even if not all classrooms use the same materials.) [Single Select]

- Yes
 No

English Reading Language Arts K-5 Instructional Materials

QUESTION 5.0:

Share the **full-subject** publisher/ product that teachers in your LEA will use regularly (once a week or more, on average) for **K-5 English RLA** instruction to ensure coverage of 100% of the TEKS.

Full-subject instructional materials: Full sets of materials designed to provide the teacher with everything needed to cover 100% of the Texas Essential Knowledge and Skills (TEKS) in a grade level/band, including scope and sequence, daily lesson plans, and student materials.

Grades K–2 English RLA full- subject publisher/ product used:

HMH Into Reading K-5th

Grades 3–5 English RLA full- subject publisher/ product used:

HMH Into Reading K-5th

QUESTION 5.1: Share the **supplemental** publisher/product that teachers in your LEA will regularly use (once a week or more, on average) for **K-5 English RLA** instruction to ensure coverage of 100% of the TEKS (do not include products used to build classroom libraries).

Supplemental Materials: Materials not designed to cover 100% of the TEKS but designed to complement, enrich, and/or extend supports in a particular subject and/or grade band.

Grades K–2 English RLA supplemental publisher/ product used:

Haggerty Phonological Awareness
Scholastic Storyworks

Grades 3–5 English RLA supplemental publisher/ product used:

Scholastic Storyworks

Spanish Reading Language Arts K-5 TEKS Coverage Certification

QUESTION 6.0: For school year 23–24 will your LEA make materials available for use that cover 100% of the **K-5 Spanish RLA TEKS**? (This includes teacher- or LEA-developed materials. You may select "yes" even if not all classrooms use the same materials.) [Single select]

Yes

No

Spanish Reading Language Arts K-5 Instructional Materials

QUESTION 7.0: Share the **full-subject** publisher/ product that teachers in your LEA will use regularly (once a week or more, on average) for **K-5 Spanish RLA** instruction to ensure coverage of 100% of the TEKS. [Single select for each grade band]

Full-subject instructional materials: Full sets of materials designed to provide the teacher with everything needed to cover 100% of the Texas Essential Knowledge and Skills (TEKS) in a grade level/band, including scope and sequence, daily lesson plans, and student materials.

Grades K–2 Spanish RLA full- subject publisher/ product used:

HMH Arriba La Lectura K-2nd

Grades 3–5 Spanish RLA full- subject publisher/ product used:

HMH Arriba La Lectura 3rd-5th

QUESTION 7.1: Share the **supplemental** publisher/product that teachers in your LEA will regularly use (once a week or more, on average) for **K-5 Spanish RLA** instruction to ensure coverage of 100% of the TEKS (do not include products used to build classroom libraries).

Supplemental Materials: Materials not designed to cover 100% of the TEKS but designed to complement, enrich, and/or extend supports in a particular subject and/or grade band.

Grades K–2 Spanish RLA supplemental publisher/ product used:

Amplify Reading
Education Galaxy
Scholastic News
iReady

Grades 3–5 Spanish RLA supplemental publisher/ product used:

Amplify Reading
Education Galaxy
Scholastic News
iReady

English Reading Language Arts 6-8 TEKS Coverage Certification

QUESTION 8.0: For school year 2023–24 will your LEA make materials available for use that cover 100% of the **English 6-8 RLA TEKS**? (This includes teacher- or LEA-developed materials. You may select "yes" even if not all classrooms use the same materials) [Single select]

- Yes
- No

English Reading Language Arts 6-8 Instructional Materials

QUESTION 9.0: Share the **full-subject** publisher/ product that teachers in your LEA will use regularly (once a week or more, on average) for **English 6-8 RLA** instruction to ensure coverage of 100% of the TEKS.

Full-subject instructional materials: Full sets of materials designed to provide the teacher with everything needed to cover 100% of the Texas Essential Knowledge and Skills (TEKS) in a grade level/band, including scope and sequence, daily lesson plans, and student materials.

Grades 6-8 English RLA full- subject publisher/ product used:

<i>HMH Into Literature</i>

QUESTION 9.1: Share the **supplemental** publisher/product that teachers in your LEA will regularly use (once a week or more, on average) for **English 6-8 RLA** instruction to ensure coverage of 100% of the TEKS (do not include products used to build classroom libraries).

Supplemental Materials: Materials not designed to cover 100% of the TEKS but designed to complement, enrich, and/or extend supports in a particular subject and/or grade band.

Grades 6-8 English RLA supplemental publisher/ product used:

<i>Imagination Station Inc., Istation (Assessment 7th grade)</i> <i>iReady (6th grade)</i> <i>Scholastic Magazines, Scholastic (6th-8th)</i> <i>No Red Ink (6th-8th)</i>

English Reading Language Arts 9-12 TEKS Coverage Certification

QUESTION 10.0 For school year 2023-24 will your LEA make materials available for use that cover 100% of the **English 9-12 RLA TEKS**? (This includes teacher- or LEA-developed materials. You may select "yes" even if not all classrooms use the same materials.)

- Yes
- No

English Reading Language Arts 9-12 Instructional Materials

QUESTION 11.0 Share the full-**subject** publisher/ product that teachers in your LEA will use regularly (once a week or more, on average) for **English 9-12 RLA** instruction to ensure coverage of 100% of the TEKS.

Full-subject instructional materials: Full sets of materials designed to provide the teacher with everything needed to cover 100% of the Texas Essential Knowledge and Skills (TEKS) in a grade level/band, including scope and sequence, daily lesson plans, and student materials.

Grades 9 - 12 English RLA full- subject publisher/ product used:

Savvas myPerspectives

QUESTION 11.1 Share the **supplemental** publisher/product that teachers in your LEA will regularly use (once a week or more, on average) for **English 9-12 RLA** instruction to ensure coverage of 100% of the TEKS (do not include products used to build classroom libraries).

Supplemental Materials: Materials not designed to cover 100% of the TEKS but designed to complement, enrich, and/or extend supports in a particular subject and/or grade band.

Grades 9-12 English RLA supplemental publisher/ product used:

Scholastic Magazine (9th-12th)

No Red Ink (9th-12th)

Mathematics TEKS Certification

QUESTION 12.0: Do you manage the scope and sequence of your mathematics content at a LEA (district or charter) level? Please indicate your LEA's approach to managing the scope and sequence of the mathematics content in each of the following grade bands. [Single Select for each grade band]

		Do not manage scope and sequence at a LEA level	Use product-specific scope and sequence	Use LEA-developed scope and sequence	Use Texas Resource System (TRS) scope and sequence	N/A
Question 12.1:	Kindergarten – 2nd Grade	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Question 12.2:	3rd –5th Grade	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Question 12.3:	6th –8th Grade	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Question 12.4:	9th - 12th Grade	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Mathematics K-5 TEKS Coverage Certification

QUESTION 13.0: For school year 2023-24 will your LEA make materials available for use that cover 100% of the **K–5 Mathematics TEKS**? (This includes teacher- or LEA-developed materials. You may select "yes" even if not all classrooms use the same materials.) [Single Select]

Yes

No

Mathematics K-5 Instructional Materials

QUESTION 14.0: Share the **full-subject** publisher/ product that teachers in your LEA will use regularly (once a week or more, on average) for **K–5 Mathematics** instruction to ensure coverage of 100% of the TEKS.

Full-subject instructional materials: Full sets of materials designed to provide the teacher with everything needed to cover 100% of the Texas Essential Knowledge and Skills (TEKS) in a grade level/band, including scope and sequence, daily lesson plans, and student materials.

Grades K–5 Mathematics full- subject publisher/ product used:

1. *HMH Go Math English and Spanish K-5th*
2. *Pearlized Math K-1st*
3. *Sharon Wells Math 3rd-5th*

QUESTION 14.1: Share the **supplemental** publisher/product that teachers in your LEA will regularly use (once a week or more, on average) for **K-5 Mathematics** instruction to ensure coverage of 100% of the TEKS (do not include products used to build classroom libraries).

Supplemental Materials: Materials not designed to cover 100% of the TEKS but designed to complement, enrich, and/or extend supports in a particular subject and/or grade band.

Grades K–5 Mathematics supplemental publisher/ product used:

1. *District Developed Curriculum Support & Activities*
2. *iReady*
3. *ST Math*
4. *Zearn Math*

Mathematics 6-8 TEKS Coverage Certification

QUESTION 15.0 For school year 2023-24 will your district make materials available for use that cover 100% of the **6-8 Mathematics TEKS**? (This includes teacher- or LEA-developed materials. You may select “yes” even if not all classrooms use the same materials). [Single Select]

Yes

No

Mathematics 6-8 Instructional Materials

QUESTION 16.0: Share the **full-subject** publisher/product that teachers in your LEA or charter will regularly use (once a week or more, on average) for **6-8 Mathematics** instruction to ensure coverage of 100% of the TEKS.

Full-subject instructional materials: Full sets of materials designed to provide the teacher with everything needed to cover 100% of the Texas Essential Knowledge and Skills (TEKS) in a grade level/band, including scope and sequence, daily lesson plans, and student materials.

Grades 6-8 Mathematics full- subject publisher/ product used:

HMH Texas Go Math

QUESTION 16.1: Share the **supplemental** publisher/product that teachers in your LEA or charter will regularly use (once a week or more, on average) for **6-8 Mathematics** instruction to ensure coverage of 100% of the TEKS (do not include products used to build classroom libraries).

Supplemental Materials: Materials not designed to cover 100% of the TEKS but designed to complement, enrich, and/or extend supports in a particular subject and/or grade band.

Grades 6–8 Mathematics supplemental publisher/ product used:

IXL

Delta Math

Mathematics 9-12 TEKS Coverage Certification

QUESTION 17.0: For School Year 2023-24 will your LEA make materials available for use that cover 100% of the **9-12 Mathematics TEKS**? (This includes teacher- or LEA-developed materials. You may select "yes" even if not all classrooms use the same materials.) [Single Select]

Yes

No

Mathematics 9-12 Instructional Materials

QUESTION 18.0: Share the **full-subject** publisher/product that teachers in your LEA or charter will regularly use (once a week or more, on average) for **9-12 Mathematics** instruction to ensure coverage of 100% of the TEKS.

Full-subject instructional materials: Full sets of materials designed to provide the teacher with everything needed to cover 100% of the Texas Essential Knowledge and Skills (TEKS) in a grade level/band, including scope and sequence, daily lesson plans, and student materials.

Grades 9-12 Mathematics full- subject publisher/ product used:

McGraw Hill (Algebra 1, Algebra 2, Geometry, Pre-Calculus)

Savvas Math Models

Springboard College Board Pre-AP (Algebra 1, Algebra 2, Geometry)

QUESTION 18.1: Share the **supplemental** publisher/product that teachers in your LEA or charter will regularly use (once a week or more, on average) for **9-12 Mathematics** instruction to ensure coverage of 100% of the TEKS (do not include products used to build classroom libraries).

Supplemental Materials: Materials not designed to cover 100% of the TEKS but designed to complement, enrich, and/or extend supports in a particular subject and/or grade band.

Grades 9-12 Mathematics supplemental publisher/ product used:

IXL

Delta Math

Social Studies TEKS Certification

QUESTION 19.0: Do you manage the scope and sequence of your social studies content at a LEA (district or charter) level? Please indicate your LEA's approach to managing the scope and sequence of the social studies content in each of the following grade bands. [Single Select for each grade band]

		Do not manage scope and sequence at a LEA level	Use product-specific scope and sequence	Use LEA-developed scope and sequence	Use Texas Resource System (TRS) scope and sequence	N/A
Question 19.1:	Kindergarten – 2 nd Grade	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Question 19.2:	3 rd –5 th Grade	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Question 19.3:	6 th –8 th Grade	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Question 19.4:	9 th - 12 th Grade	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Social Studies K-5 TEKS Coverage Certification

QUESTION 20.0: For school year 2023-24 will your LEA make materials available that cover 100% of the Grades K–5 Social Studies TEKS? (This includes teacher- or LEA-developed materials. You may select "yes" even if not all classrooms use the same materials.)

- Yes
 No

Social Studies K-5 Instructional Materials

QUESTION 21.0: Share the **full-subject** publisher/product that teachers in your LEA will regularly use (once a week or more, on average) for **K-5 Social Studies** instruction to ensure coverage of 100% of the TEKS.

Full-subject instructional materials: Full sets of materials designed to provide the teacher with everything needed to cover 100% of the Texas Essential Knowledge and Skills (TEKS) in a grade level/band, including scope and sequence, daily lesson plans, and student materials.

Grades K-5 Social Studies full- subject publisher/ product used:

Savvas (formerly Pearson) My World/Mi Mundo

QUESTION 21.1: Share the **supplemental** publisher/product that teachers in your LEA will regularly use (once a week or more, on average) for **K-5 Social Studies** instruction to ensure coverage of 100% of the TEKS (do not include products used to build classroom libraries).

Supplemental Materials: Materials not designed to cover 100% of the TEKS but designed to complement, enrich, and/or extend supports in a particular subject and/or grade band.

Grades K-5 Social Studies supplemental publisher/ product used:

TEKS Resource System (TRS)
Scholastic News

Social Studies 6-8 TEKS Coverage Certification

QUESTION 22.0: For school year 2023-24 will your LEA make materials available that cover 100% of the **6-8 Social Studies TEKS**? (This includes teacher- or LEA-developed materials. You may select "yes" even if not all classrooms use the same materials.)

- Yes
 No

Social Studies 6-8 Instructional Materials

QUESTION 23.0: Select **full-subject** publisher/product that teachers in your LEA will regularly use (once a week or more, on average) for **6-8 Social Studies** instruction to ensure coverage of 100% of the TEKS.

Full-subject instructional materials: Full sets of materials designed to provide the teacher with everything needed to cover 100% of the Texas Essential Knowledge and Skills (TEKS) in a grade level/band, including scope and sequence, daily lesson plans, and student materials.

Grades 6-8 Social Studies full- subject publisher/ product used:

Cengage Learning, Inc. National Geographic Learning
HMH US History
McGraw Hill Texas History

QUESTION 23.1: Share the **supplemental** publisher/product that teachers in your LEA will regularly use (once a week or more, on average) for **6-8 Social Studies** instruction to ensure coverage of 100% of the TEKS (do not include products used to build classroom libraries).

Supplemental Materials: Materials not designed to cover 100% of the TEKS but designed to complement, enrich, and/or extend supports in a particular subject and/or grade band.

Grades 6-8 Social Studies supplemental publisher/ product used:

Social Studies Success

Texas Atlas Program

Social Studies 9-12 TEKS Coverage Certification

QUESTION 24.0: For school year 2023-24 will your LEA make materials available that cover 100% of the **9-12 Social Studies TEKS**? (This includes teacher- or LEA-developed materials. You may select “yes” even if not all classrooms use the same materials.)

Yes

No

Social Studies 9-12 Instructional Materials

QUESTION 25.0: Share the **full-subject** publisher/product that teachers in your LEA will regularly use (once a week or more, on average) for **9-12 Social Studies** instruction to ensure coverage of 100% of the TEKS.

Full-subject instructional materials: Full sets of materials designed to provide the teacher with everything needed to cover 100% of the Texas Essential Knowledge and Skills (TEKS) in a grade level/band, including scope and sequence, daily lesson plans, and student materials.

Grades 9 - 12 Social Studies full- subject publisher/ product used:

HMH The Americans, HMH World History, McGraw Hill US Government, McGraw Hill Economics, McGraw Hill World Geography, McGraw Hill Sociology, Pearson Psychology, Goodheart-Willcox Personal Financial Literacy, HMH African American Ethnic Studies, Oxford University Press Mexican American Ethnic Studies

QUESTION 25.1: Share the **supplemental** publisher/product that teachers in your LEA will regularly use (once a week or more, on average) for **9-12 Social Studies** instruction to ensure coverage of 100% of the TEKS (do not include products used to build classroom libraries).

Supplemental Materials: Materials not designed to cover 100% of the TEKS but designed to complement, enrich, and/or extend supports in a particular subject and/or grade band

Grades 9 - 12 Social Studies supplemental publisher/ product used:

Social Studies School Services Active Classroom
ABC Clio Supplemental Database for Ethnic Studies

Science TEKS Certification

QUESTION 26.0: Do you manage the scope and sequence of your science content at a LEA (district or charter) level? Please indicate your LEA's approach to managing the scope and sequence of the science content in each of the following grade bands. [Single select for each grade band]

		Do not manage scope and sequence at a LEA level	Use product-specific scope and sequence	Use LEA-developed scope and sequence	Use Texas Resource System (TRS) scope and sequence	N/A
Question 26.1:	Kindergarten – 2nd Grade	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Question 26.2:	3rd –5th Grade	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Question 26.3:	6th –8th Grade	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Question 26.4:	9th – 12th Grade	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Science K-5 TEKS Coverage Certification

QUESTION 27.0: For school year 2023-24 will your LEA make materials available that cover 100% of the **K–5 Science TEKS**? (This includes teacher- or LEA-developed materials. You may select "yes" even if not all classrooms use the same materials.)

- Yes
 No

Science K-5 Instructional Materials

QUESTION 28.0: Share the **full-subject** publisher/product that teachers in your LEA will regularly use (once a week or more, on average) for **K-5 Science** instruction to ensure coverage of 100% of the TEKS.

Full-subject instructional materials: Full sets of materials designed to provide the teacher with everything needed to cover 100% of the Texas Essential Knowledge and Skills (TEKS) in a grade level/band, including scope and sequence, daily lesson plans, and student materials.

Grades K-5 Social Science full- subject publisher/ product used:

K-5th Savvas (formerly Pearson) Science Interactive
K-5th Savvas (formerly Pearson) Ciencias Interactivas

QUESTION 28.1: Share the **supplemental** publisher/product that teachers in your LEA will regularly use (once a week or more, on average) for **K-5 Science** instruction to ensure coverage of 100% of the TEKS (do not include products used to build classroom libraries).

Supplemental Materials: Materials not designed to cover 100% of the TEKS but designed to complement, enrich, and/or extend supports in a particular subject and/or grade band.

Grades K-5 Science supplemental publisher/ product used:

Science 6-8 TEKS Coverage Certification

QUESTION 29.0: For school year 2023-24 will your LEA make materials available that cover 100% of the **6-8 Science TEKS**? (This includes teacher- or LEA-developed materials. You may select "yes" even if not all classrooms use the same materials.)

Yes

No

Science 6-8 Instructional Materials

QUESTION 30.0: Share the **full-subject** publisher/product that teachers in your LEA will regularly use (once a week or more, on average) for **6-8 Science** instruction to ensure coverage of 100% of the TEKS.

Full-subject instructional materials: Full sets of materials designed to provide the teacher with everything needed to cover 100% of the Texas Essential Knowledge and Skills (TEKS) in a grade level/band, including scope and sequence, daily lesson plans, and student materials.

Grades 6 - 8 Science full- subject publisher/ product used:

1. *STEMscopes, Incorporated STEMscopes 2.0*
2. *HMH Texas Science Fusion*

QUESTION 30.1: Share the **supplemental** publisher/product that teachers in your district or charter will regularly use (once a week or more, on average) for **6-8 Science** instruction to ensure coverage of 100% of the TEKS (do not include products used to build classroom libraries).

Supplemental Materials: Materials not designed to cover 100% of the TEKS but designed to complement, enrich, and/or extend supports in a particular subject and/or grade band.

Grades 6 - 8 Science supplemental publisher/ product used:

1. *Locally developed materials*
2. *TEKS Resource System (TRS)*
3. *Edusmart*
4. *Explore Learning Science Gizmos*

Science 9-12 TEKS Coverage Certification

QUESTION 31.0: For school year 2023-24 will your LEA make materials available that cover 100% of the **9-12 Science TEKS**? (This includes teacher- or district-developed materials. You may select "yes" even if not all classrooms use the same materials.)

- Yes
 No

Science 9-12 Instructional Materials

QUESTION 32.0: Share the **full-subject** publisher/product that teachers in your LEA will regularly use (once a week or more, on average) for **9-12 Science** instruction to ensure coverage of 100% of the TEKS.

Full-subject instructional materials: Full sets of materials designed to provide the teacher with everything needed to cover 100% of the Texas Essential Knowledge and Skills (TEKS) in a grade level/band, including scope and sequence, daily lesson plans, and student materials.

Grades 9 – 12 Science full- subject publisher/ product used:

1. *Savvas (Pearson Education, Inc.) Pearson/Savvas Biology/ Texas Edition*
2. *Sapling Systems, Inc. dba Sapling Learning Dynamic Chemistry Texas Edition*
3. *Texas Parks and Wildlife Aquatic Science*
4. *Savvas Marine Science*
5. *McGraw Hill Integrated Physics and Chemistry/Physics*
6. *Discovery Education Earth Space Science Techbook*

QUESTION 32.1: Share the **supplemental** publisher/product that teachers in your district or charter will regularly use (once a week or more, on average) for **9-12 Science** instruction to ensure coverage of 100% of the TEKS (do not include products used to build classroom libraries).

Supplemental Materials: Materials not designed to cover 100% of the TEKS but designed to complement, enrich, and/or extend supports in a particular subject and/or grade band.

Grades 9 - 12 Science supplemental publisher/ product used:

1. *Locally developed materials*
2. *TEKS Resource System (TRS)*
3. *Explore Learning Science Gizmos*
4. *Edusmart-Biology*

Phonics Informational Questions

QUESTION 33.0 Share the full-**subject** publisher/ product that teachers in your district will use regularly (once a week or more, on average) for Grades **K-3 Phonics RLA** instruction to ensure coverage of 100% of the TEKS.

Full-subject instructional materials: Full sets of materials designed to provide the teacher with everything needed to cover 100% of the Texas Essential Knowledge and Skills (TEKS) in a grade level/band, including scope and sequence, daily lesson plans, and student materials.

Grades K-3 Phonics RLA full- subject publisher/ product used:

HMH Into Reading

HMH Arriba la Lectura

Children's Internet Protection

The Children's Internet Protection Act

The Children's internet protection Act (CIPA) was enacted by Congress in 2000 to address concerns about children's access to obscene or harmful content over the Internet. (You may find more information on the FCC website.)

In accordance with Texas Administrative Code 19 TAC §66.105, school districts or charter schools are required to certify that they protect against access to obscene or harmful content in compliance with the requirements for certification under the Children's Internet Protection Act, 47 USC §254(h)(5)(B) and (C).

QUESTION 34.0: Does your district or charter school protect against access to obscene or harmful content in compliance with the requirements for certification under the Children's Internet Protection Act, 47 USC §254(h)(5)(B) and (C).?

Yes

No

Additional Informational Questions (Optional)*

QUESTION 35.0 Has your district or charter ever used the Texas Resource Review (TRR) to make decisions about which instructional materials to use?*

Yes

No

QUESTION 35.1 If **"Yes" is selected:** In which subject area(s) have you used the TRR to obtain information about the quality of products? *

- English Reading Language Arts
- Spanish Reading Language Arts
- Prekindergarten
- Math

QUESTION 36.0 **How likely is it you would recommend TRR to other educators? 0 (Not at all likely) to 10 (Extremely Likely)***

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

QUESTION 37.0

Assessment Platform: Select the assessment platform (if any) your district leverages for unit/module, diagnostic, or interim, and for which type of assessments.

Product	Interim	Diagnostic	Unit/Module Formatives
Eduphoria	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
DMCA	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Texas Formative Assessment Resource	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
STAAR Interim	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other: <input style="width: 100%; height: 20px;" type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: <input style="width: 100%; height: 20px;" type="text" value="Insert here"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: <input style="width: 100%; height: 20px;" type="text" value="Insert here"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

[TEKS Certification and Allotment Survey Ratification \[Printed and uploaded PDF\]](#)

In accordance with Texas Education Code [§31.04](#), school districts and open-enrollment charter schools are required to certify annually to the State Board of Education and the commissioner that, for each subject in the required curriculum other than physical education, students have access to instructional materials that cover all the Texas Essential Knowledge and Skills (TEKS) for the coming school year. Additionally, in accordance with Texas Administrative Code [19 TAC §66.105](#), school districts or charter schools are required to certify that they protect against access to obscene or harmful content in compliance with the requirements for certification under the Children's Internet Protection Act, 47 USC §254(h)(5)(B) and (C).

These certifications must be ratified by local school boards of trustees or governing bodies in public, noticed meetings. Districts and open-enrollment charter schools will be unable to order instructional materials through EMAT until the certifications have been received by the Texas Education Agency (TEA).

Other Certified Subject Areas:

Please select each subject in the required curriculum below for which your LEA provides each student with instructional materials that cover all elements of the essential knowledge and skills:

[multiple select]

- Career & Technical Education
- Fine Arts
- Health
- Technology Applications
- English Language Proficiency Standards
- Languages other than English

District County Number (6-digit ID):

District or Charter Name:

Date of Ratification by Local School Board of Trustees or Governing Body:

Signature of the Board President and Secretary or Governing Board Officer

Board President

Date

Board Secretary

After ratification, LEAs will submit this form to the TEA through an electronic TEKS Certification 2023–24 Survey. The survey will be available on the [TEA State-Adopted Instructional Materials webpage](#) beginning on **Monday, March 20, 2023.**

BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: May 8, 2023

SUBJECT: Discussion and Possible Action on Staff Travel to attend the International Baccalaureate IB Global Inclusion Conference in Toronto, Canada

REFERENCE: Goal 1: Students Achievement/Student Focus

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The IB Global Conference, is the largest gathering of IB Educators in the Americas. This conference is the re-branded Conference of the Americas, to which IB Educators from McAllen ISD have attended. Each year, the conference is held, in different regions of the Americas. This year, the conference is in Toronto, Canada. The theme of the Conference is Education for an Inclusive Future, and will feature over 100 relevant professional development sessions on educational technology and innovation, cutting edge research in education, inclusion, equitable quality education and access to all students. Learning and teaching sessions on teacher and student agency, assessment, the IB Frameworks of student learning through the PYP, MYP and DP and learning frameworks that serve non- IB schools as well. Leadership strands include sessions on creating and enhancing an inclusionary school culture, enhancing program partnerships with other schools, and best practices from other successful programs.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Board Policy FMG (LOCAL) requires board approval for student out of country travel.
That the board approve travel to the IB Global Inclusion Conference for IB administrators and staff.

LEGAL REVIEW: None required.

BUDGETARY CONSIDERATIONS:

Cost of flights and hotel are in line with US Travel, and additional costs are not incurred.

RECOMMENDED BOARD ACTION:

That the board of trustees approve the travel to the IB Global Inclusion Conference and Pre-conference in Toronto, Canada, July 26, 2023 - July 30, 2023.

SUBMITTED BY: *Karen Nitsch (Adv. Academics)*

SUPERVISOR: *Rosalba De Hoyos*

For further information contact:
Name: Karen Nitsch
Office: 956-618-6059
eMail: karen.nitsch@mcallenisd.net

Approved for presentation to the Board of Education:

J. Alexander

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Superintendent of Schools May 3, 2023

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

SUBMITTED BY: _____

SUPERVISOR: *Rosalba De Hoyos*

Approved for presentation to the Board of Education:

J. X. O'Connell

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Superintendent of Schools May 4, 2023

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

SUBJECT: Discussion and Possible Action on Memorandum of Understanding No. 2024-006 Hidalgo County Head Start Program

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Head Start Act Public Law 110-134 allows for Hidalgo County Head Start Program ("HCHSP") to coordinate and collaborate with McAllen Independent School District ("District") to manage a high-quality funded preschool program in the service area.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The purpose of the Memorandum of Understanding ("MOU") between the District and HCHSP is to develop and foster a cohesive partnership that provides a high quality program for children and their families. Both parties agree to communicate and share leadership responsibilities to maximize resources; and to ensure that the program is developed, implemented, and reviewed annually to improve quality of services.

LEGAL REVIEW:

The MOU has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

Funds are budgeted through Early Childhood Allotment and Local Funds.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve the Memorandum of Understanding No. 2024-006 Hidalgo County Head Start Program for a term of three (3) years commencing July 1, 2023 through June 30, 2026.

SUBMITTED BY: Rosalba De Hoyos

SUPERVISOR: _____

For further information contact:
Name: Rosalba De Hoyos
Office: (956) 618-6048
eMail: Rosaba.DeHoyos@mcallenisd.net

Approved for presentation to the Board of Education:



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Superintendent of Schools

**Memorandum of Understanding Between
Hidalgo County Head Start Program
And
McAllen Independent School District**

PARTIES TO THE MOU:

This memorandum of understanding (MOU) represents a collaborative agreement between Hidalgo County Head Start Program herein referred to as HCHSP and the McAllen Independent School District (a political subdivision for the State of Texas and a legally constituted Independent School District located with Hidalgo County, Texas) herein referred to as “ISD,” for services.

PERIOD OF MOU:

The MOU period will be from July 1, 2023 to June 30, 2026.

PURPOSE:

The Purpose of the HCHSP and ISD Pre-Kindergarten Partnership is to:

- A. Create full-day, full-school year early care and education services for income-eligible families who need services offered collectively by HCHSP and ISD.
- B. Co-deliver Head Start and Pre-K seamlessly with supportive child and family services;
- C. Identify the collaboration roles and responsibilities of the parties and enhance linkages and relationships to deliver coordinated services;
- D. Improve the availability, quality and coordination of comprehensive services for children ages three through five and their families by ensuring that all children in the service area have access to high-quality education and comprehensive services, and
- E. Coordinate resources and information including data, child assessments, financial resources, equipment and other educational supports.

REGULATORY AUTHORIZATION:

- A. Head Start’s responsibility for coordination and collaboration with the appropriate local entity responsible for managing high-quality publicly funded preschool programs in the service area of the Head Start grantee is mandated in the Head Start Act: Public Law 110-134 “Improving Head Start for School Readiness Act of 2007”;
- B. In accordance with the Head Start Act: Public Law 110-134 “Improving Head Start for School Readiness Act of 2007,” Head Start will coordinate activities and collaborate with programs under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.), the agencies responsible for administering Section 106 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a), and Parts B and E of Title IV of the Social Security Act (42 U.S.C. 621 et seq., 670 et seq.) programs under Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et. seq.) Even Start programs under Subpart 3 of Part B of Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6381 et seq.) programs under Section 619 and Part C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1419, 1431et seq.), and other entities providing early childhood education and development programs or services, serving the children and families served by the Head Start agency;
- C. In accordance with the General Appropriations Act, Article III, Rider 78, passed and signed in 2017, state-funded Pre-K programs are to implement high-quality Pre-K consistent with the High-Quality Pre-K program requirements in **Texas Education Code** (TEC) §29.167 – 29.171 and consistent with the provisions of TEC Chapters 41 and 42 Collaboration classrooms that are assigned to HCHSP facilities will align with **Texas Child Care Licensing** (CCL) standards, rules and laws expression, age or disability. Collaboration classrooms that are assigned to ISD facilities will align with **Texas Education Agency** (TEA)

standards, rules and laws expression, age or disability and will be exempt from **Texas Child Care Licensing** (TXCCL) standards, rules and laws.

COLLABORATION FRAMEWORK:

HCHSP and ISD will collaborate fully with joint responsibility on the following:

- A. Educational activities including child and teacher classroom environment assessments;
- B. Recruitment activities to include public information related to the partnership;
- C. Resources and responsibilities for ongoing staff development;
- D. Program technical assistance;
- E. Assessing and responding to parent needs;
- F. Transition activities for kindergarten placement;
- G. Use of facilities;
- H. Disabilities services referrals and further assessments;
- I. Alignment of curriculum with activities and objectives that support a blended Head Start and Pre-K program approach and high-quality learning environments in which classroom teacher and teaching assistance co-deliver and share the responsibility of lesson planning, the fidelity of instruction and documented progress for all students assigned to their classroom. As a team, the teachers will collaboratively make instructional decisions and share the responsibility of student outcomes in a manner consistent with **Family Educational Rights and Privacy Act (FERPA)**;
- J. Sharing educational data through at least 3rd grade at an aggregated level and /or individual level as appropriate to ensure program impact is measured and tracked and HCHSP and ISD name each other as “educational officials” for the purpose of FERPA records handling;
- K. Sharing documentation to support HCHSP Non-Federal Match requirements;
- L. Collaboration partners will coordinate to provide collaborative Head Start and Pre-K services for age and income eligible Pre-K children and their families for a minimum of 420 minutes per day for not less than 1,020 hours annually;
- M. ISD will permit any Head Start federal or state authorities or other regulatory agencies to observe and evaluate the delivery and /or performance of services. This includes access to any books, papers, and records of ISD that are directly related to this Agreement for the purpose of making an audit, examination, photocopies, excerpts and transcriptions. ISD will comply with all laws, ordinances, rules and regulations of any government entity pertaining to its performance pursuant to this Agreement;
- N. ISD will ensure, in accordance with the Federal Drug-Free Workplace Act of 1988, that the unlawful manufacturing, distribution, dispensing, possession, or use of a controlled substance is prohibited for individuals who are directly engaged in the performance of work pursuant to this Agreement;
- O. ISD agrees to ensure attendance of ISD staff to pertinent collaboration meetings and **professional development (PD)** as required or mandated and appropriate proof of attendance will be provided for employment records;
- P. ISD and HCHSP leadership will schedule and convene three (3) regular collaboration meetings to evaluate and review partnership service delivery in accordance with 45 CFR Chapter XIII, **Head Start Program Performance Standards (HSPPS)** and the Head Start for School Readiness Act of 2007;
- Q. ISD agrees to ensure that each ISD teacher of record completes two (2) parent conferences and two (2) home visits per HCHSP requirements.
- R. ISD will provide an ISD employee or trained volunteer in order to provide a duty-free, thirty (30) minute lunch break for the HCHSP teacher and **teacher assistant (TA)** for collaboration classrooms on ISD campuses;
- S. HCHSP will provide an HCHSP employee or trained volunteer in order to provide a duty-free, thirty (30) minute lunch break for the ISD teacher and **teacher assistant (TA)** for collaboration classrooms on HCHSP campuses;
- T. ISD and HCHSP will remain in compliance with all local, state and federal rules, regulations and requirements. If compliance is not met, either party may terminate this agreement immediately should the findings impact the provisions;

- U. HCHSP and ISD will develop a collaboration handbook clarifying collaboration expectations, processes and procedures that will be reviewed annually;
- V. Each classroom will support a maximum of twenty (22) three-year-old and a maximum of twenty (24) four-year-old children;
- W. Both the HCHSP and ISD teacher of record will submit weekly lesson plans to the ISD Principal, the HCHSP Campus Director, and the HCHSP Area Director, as applicable;
- X. ISD teachers and TAs will maintain a staff file which meets all **Head Start Program Performance Standards** (HSPPS) and/or Child Care Licensing Minimum Standards at both HCHSP and ISD campuses;
- Y. HCHSP teachers and TAs will maintain a staff file which meets all TEA regulations at ISD campuses;
- Z. A minimum of two (2) home visits (in child's home) will be conducted by ISD and HCHSP teacher of record with all collaboration families. ISD and HCHSP TA's will be encouraged to participate on all home visits;
- AA. A minimum of two (2) parent conferences at collaboration will be conducted with all collaboration families. ISD and HCHSP TAs will be encouraged to participate on all parent conferences; and
- BB. Other elements/programs as listed below or as mutually agreed upon in future iterations of or addendums to this MOU.

CLI Requirements for Collaboration Classrooms:

- A. CLI will establish student-level data viewing and editing permissions for collaboration classrooms after a copy of the signed document and specific classroom collaboration details are received by CLI.
- B. Specific collaboration details of classes, teachers, and students will be provided to CLI before collaborations are established in the CLI Engage database:
 - a. Each party will designate a primary contact for all collaborations and inform CLI of the contacts.
 - b. Collaboration information must be submitted to CLI in the approved format that includes the names of both parties, schools, and teacher(s) assigned to the shared classrooms.
 - c. Primary contacts from both parties will approve collaboration details in writing via email.
 - d. Only dually-enrolled students in collaboration classrooms will be shared by both parties.
- C. Both parties will be able to view and edit data for only those classes approved by both parties.
- D. Users with CLI Engage accounts will have the following level of access to view student-level data:
 - a. HCHSP/District Users and Specialists to view and edit student-level data for classes at schools that they are assigned to view.
 - b. Principal/HCHSP staff will only have access to view and edit student-level data for classes at schools that they are assigned to view.
 - c. School/HCHSP Specialists will only have access to view and edit student-level data for classes at schools that they are assigned to view.
 - d. 4. Teachers will only have access to view and edit student-level data for classes that they are assigned to view.
- E. The parties will establish which party will upload student-level data into CLI Engage.
- F. This MOU will be renewed when additional classes are added as a part of the collaboration.
- G. Either party can request that access to view and edit student-level information can be removed from the other party at any time.
- H. CLI will require written consent from both parties before any changes are made to student-level permission for users who have access to view and edit student-level data.

HCHSP RESPONSIBILITIES:

- A. HCHSP will provide one (1) certified Head Start teacher of record to be paired with one (1) ISD Associates of Arts (AA) Degree in Early Childhood Education or Interdisciplinary Studies (EC-4) or Child Development Associate (CDA) credentialed teaching assistant;
- B. HCHSP will provide one (1) Associates of Arts (AA) Degree in Early Childhood Education or Interdisciplinary Studies (EC-3) or Child Development Associate (CDA) credentialed teaching assistant to

- be paired with one (1) ISD teacher. The teaching assistant hired by HCHSP will be required to have a minimum of a CDA credential within two (2) years of hire;
- C. HCHSP will provide one (1) CDA disability aide/floater for every two (2) collaboration classrooms that will support both the HCHSP and ISD teachers of record, to alternate between both classrooms (AM & PM) or as needed to support children with special needs or children with challenging behaviors;
 - D. HCHSP will ensure vacancies for Head Start teachers and TA's are filled by HCHSP as soon as a possible;
 - E. HCHSP will permit ISD and other regulatory agencies to observe and evaluate the delivery and/or performance of contracted services. This includes access to any books, papers, and records of ISD that are directly related to this contract for the purpose of making an audit, examination, photocopies, excerpts and transcriptions. HCHSP an ISD must comply with all laws, ordinance, rules and regulations of any government entity pertaining to its performance pursuant to this Agreement;
 - D. HCHSP will maintain complete records which pertain to the Agreement for a period of three (3) years beyond the Agreement ending date or until all litigation, claims, or audit findings involving the records have been resolved if such claim or audit is started before the expiration date of the three (3) year period;
 - E. HCHSP will provide children and family support services as per 45 CFR Chapter XIII;
 - F. HCHSP will adhere to HSPPS and the Head Start for School Readiness Act of 2007;
 - G. HCHSP will complete, maintain and review Head Start child files for eligibility criteria requirement;
 - H. HCHSP will ensure Head Start representatives regularly conduct scheduled on going, on-site monitoring visits, technical assistance and training, and review of children and family files;
 - I. HCHSP will provide ISD with written copies of site visit reports for corrective action as appropriate;
 - J. HCHSP will provide ongoing training and technical assistance as needed in all areas of the program;
 - K. HCHSP will provide meals to the all collaboration children, as per USDA/School Nutrition Program guidelines for all children on HCHSP and ISD campuses. HCHSP and ISD staff are encouraged to eat with the children at lunch (family style service) and will have their meals reimbursed from Head Start funds on a monthly basis upon verification of eligibility and meal consumption.
 - L. HCHSP will indemnify and hold harmless ISD, its offices, agents, servants and employees from and against any and all loss, cost, expense, liability, damage for injury, including legal fees and disbursements, that the contractor, its officers, agents, servants and employees may directly or indirectly sustain, suffer or incur as a result of any and all damage or injury of any kind or nature (including death resulting there from) to all persons, whether employees of negligence in the performance of its obligation to the extent permitted by law; and
 - M. HCHSP will indemnify and hold harmless ISD, its officers, agents, servants and employees from and against any and all loss, cost, expense, liability, damage for injury, including disbursements its officers, agents, servants and employees may directly or indirectly sustain, suffer or incur as a result of any and all damage or injury of any kind or nature (including death resulting there from) to all persons, whether employees of negligence in the performance of its obligations to the extent permitted by law without waiver of any immunity or defense.

ISD RESPONSIBILITIES:

- A. ISD will provide one (1) certified ISD teacher of record to be paired with one (1) HCHSP Associates of Arts (AA) Degree in Early Childhood Education or Interdisciplinary Studies (EC-4) or Child Development Associate (CDA) credentialed teaching assistant;
- B. ISD will provide one (1) Associates of Arts (AA) Degree in Early Childhood Education or Interdisciplinary Studies (EC-4) or Child Development Associate (CDA) credentialed teaching assistant to be paired with one (1) HCHSP teacher. The teaching assistant hired by ISD will be required to have a minimum of a CDA credential within two (2) years of hire;
- C. The non-federally funded teacher and teaching assistant compensation will be considered Non-Federal Match for HCHSP. Other staff such as administrative staff additional teaching staff (music, library and art) should be charged on a percentage basis of time/children to be included as Non-Federal Share for HCHSP. Documentation of this cost will be submitted by ISD to HCHSP;

- D. ISD will provide office space for Campus Director and Support Services Staff, and space for custodial services for meal prep;
- E. Advocate to be available onsite for engaging and supporting families;
- F. ISD will provide email accounts and internet access to all collaboration ISD Staff, as applicable;
- G. ISD will collaborate with HCHSP to correct any written notice of findings and/or noncompliance(s) found during the Head Start Program Review process and provide written evidence of correction or improvement;
- H. ISD will maintain complete records which pertain to the agreement for a period of three (3) years beyond the agreement ending date or until all litigation, claims, or audit findings involving the records have been resolved if such claim or audit is started before the expiration date of the three (3) year period;
- I. ISD will ensure that existing ISD campus medical staff is available to all children enrolled in collaboration classrooms and will assist the HCHSP staff with invasive procedures or other assigned duties which non-licensed personnel are unable to perform. This will include provision for State of Texas annual requirements for vision and hearing screenings to be completed within forty-five (45) days of the first day of school. In addition, ISD campus medical staff will assist HCHSP in collecting children's immunizations, physicals, dental checkups, and lead testing prior to enrollment in order to receive full-day services;
- J. ISD will comply with TEA requirements on criminal background checks to ensure that potential employees have not been convicted of crimes that would invalidate their acceptability for employment;
- K. ISD will complete annually and prior to the first day of school the ISD Personnel File Requirements form to serve as the Head Start Personnel File as required by HCHSP regulations;
- L. ISD will maintain child and family data, that contains personal and confidential information, within a secured area accessible to collaboration staff;
- M. ISD will not assist, transfer or subcontract for the provision of services under this Agreement prior to written consent obtained from HCHSP;
- N. ISD will indemnify and hold harmless HCHSP, its officers, agents, servants and employees from and against any and all loss, cost, expense, liability, damage for injury, including disbursement to its officers, agents, servants and employees may directly or indirectly sustain, suffer or incur as a result of any and all damage or injury of any kind or nature (including death resulting there from) to all persons, whether employees are negligence in the performance of its obligations to the extent permitted by law and without waiver of any immunity of defense;
- O. ISD agrees to comply with 45 CFR Chapter XIII, HSPPS and the Head Start School Readiness Act of 2007 and the other applicable regulations provided by HCHSP;
- P. ISD will provide, at no cost to HCHSP, classroom space on ISD campuses where like-aged children attend. The space, along with usual and customary usage of the of the accompanying facilities such as library and playground, will be assigned at a fair market value (building use) for each classroom, with a rental valuation (utilities) per hour per classroom. These ISD donations shall be utilized by HCHSP for Non-Federal Match;
- Q. On a periodic basis, HCHSP and or/ its contractor will be given access to perform a certified facilities appraisal for space use in the collaboration;
- R. ISD will receive all evidence-based referrals from HCHSP to Local Education Agency (LEA) for part B or related services and maintained reciprocal progress communications 60, 90 and 120 days from date of referral;
- S. ISD will provide appropriate substitute staff in collaboration classes;
- T. ISD will allow outside evaluators to monitor or assess the classroom and instructional delivery including **Classroom Assessment and Scoring System (CLASS)** assessors up to two (2) times annually as required by 45 CFR Chapter XIII, HSPPS and the Head Start for School Readiness Act of 2007 and support ongoing coaching towards improving instruction and CLASS score

- over time;
- U. ISD will provide one (1) internal static IP for the Network Video Recorder to support the video surveillance cameras that HCHSP will provide for all collaboration classrooms to include playground and hallways that are used by collaboration.
 - V. ISD staff will be considered in the child-to-staff ratio.
 - W. ISD will provide toilet training changing tables and space for those children who need support.

CLASS COMPOSITION:

- A. Each classroom will support a maximum of twenty-two (22) three-year-old and a maximum of twenty (24) four-year-old children. Both parties will support full enrollment of qualifying students;
- B. Classrooms are located in ISD and HCHSP campuses; and
- C. Ten (10) percent of student slots will be available for children with special needs to support HSPPS.

ELIGIBILITY:

- A. ISD and HCHSP will ensure that the program meets and maintains eligibility, recruitment, selection, enrollment, and attendance requirements as required by both TEA and HSPPS Part §1302.1, Subpart A;
- B. Children must meet age requirements (three or four years of age) by September 1 of each enrollment year;
- C. At least ninety percent (90%) of children enrolled are from low-income families within the one-hundred percent (100%) federal poverty guidelines and no more than ten percent (10%) of children enrolled are from families within on hundred-thirty percent (130%) of the federal poverty guidelines;
- D. Families income is verified by HCHSP employee, based on HCHSP income eligibility, before determining that a child is eligible to participate in the program; and
- E. HCHSP will assist ISD with obtaining annual eligibility updates from collaboration children and families as required by state and local entities. ISD will publicize Pre-K through public notices in English and Spanish in accordance with the TEC 29.153 (e), p.192.

RECRUITMENT:

- A. ISD and HCHSP will recruit from service areas identified as those most in need;
- B. ISD and HCHSP will ensure, prior to the beginning of the enrollment year, the solicitation of applications from as many Head Start eligible families with the service area as possible, and
- C. HCHSP staff will assist families with filling out the Head Start application and ensure all information needed for selection and enrollment is obtained.

SELECTION:

- A. ISD and HCHSP will ensure that no children are placed in the collaboration classes without following established systematic selection process criterion;
- B. ISD and HCHSP will ensure that evidence is collected that fully supports proof of eligibility; and
- C. At the beginning of each enrollment year ISD will assist HCHSP to develop and maintain a Head Start waitlist that ranks Head start eligible children according to the established systematic selection process.

ENROLLMENT:

- A. ISD and HCHSP will coordinate to provide joint Pre-K and Head Start Registration;
- B. Full enrollment shall be maintained at all times each classroom shall have a maximum of twenty-two (22) three-year-old and a maximum of twenty (24) four-year-old children per classroom with two (2) adults present;

- C. Children enrolled in the collaboration will remain in the program for the duration of the school year except for voluntary withdrawal;
- D. ISD and HCHSP will ensure that the collaboration maintains its funded enrollment level throughout the school year;
- E. ISD and HCHSP will monitor enrollment vacancies to ensure vacancies are filled with newly enrolled students within thirty (30) calendar days from the date of a declared vacancy;
- F. ISD and HCHSP will ensure that a child found to be eligible for participation in the collaboration will remain eligible throughout the school year and the succeeding enrollment year (if applicable); and
- G. ISD will provide Pre-K enrollment to HCHSP.

ATTENDANCE:

- A. ISD and HCHSP will initiate appropriate family support procedures for all children with multiples and/or consecutive absences. When a child is absent, parents will be contacted by HCHSP within one (1) hour of school start time unless the parent has previously arranged the absence;
- B. ISD and HCHSP will provide collaborative services to eligible students for the district adopted school calendar year;
- C. ISD will allow HCHSP to communicate freely with the families of children enrolled and attending collaboration classrooms;
- D. HCHSP and ISD teacher or TA will report attendance in respective system by 10:00 a.m. M-F.

SUSPENSION AND EXPULSION:

Limitations on Suspension

To support children and to support the HSPPS §1302.17:

- A. The use of suspension must be prohibited or severely limited due to a child's behavior. Such suspensions may only be temporary in nature and must be approved by both ISD and HCHSP;
- B. A temporary suspension must be used only as a last resort and defined in TEC 37.005 (c);
- C. Before ISD and HCHSP determine whether a temporary suspension is necessary, both participating agencies must engage with a HCHSP mental health consultant, collaborate with the parents, the child's teacher, the school administrator and utilize appropriate community resources such as behavior coaches, psychologists, other appropriate specialists, or other resources as needed, to determine no other reasonable option is appropriate; and/or if a temporary suspension is deemed necessary, HCHSP and ISD must help the child return to full participation in all HCHSP and ISD activities as quickly as possible while ensuring the child's safety by:
 - a. Continuing to engage with the parents and mental health consultant, and continuing to utilize appropriate community resources;
 - b. Developing and implementing a written plan to document the action and supports needed;
 - c. Providing services that include home visits; and
 - d. Determining whether a referral to ISD responsible for implementing IDEA (public law that ensures services to children with disabilities through the nation) is appropriate.

Prohibition on Expulsion

To support children and to support the HSPPS §1302.17:

- A. A child cannot be expelled or withdrawn from the partnership program due to the child's behavior except as required by 20 U.S. C 7151 and TEC 37.007 (e) and (h). Temporary home-based services will be provided by HCHSP;
- B. If a child exhibits persistent and serious challenging behaviors all possible steps must be taken and documented to address such problems and to facilitate the child's safe participation in the program. Such steps must include, at a minimum, engaging a HCHSP mental health consultant, considering the appropriateness of providing appropriate services and supports under section 504 of the Rehabilitation

Act to ensure that the child who satisfies the definition of disability in 29 U.S.C. 705 (9) (b) of the Rehabilitation Act is not excluded from the program on the basis of disability;

- C. If a child has an Individualized Educational Plan (IEP), ISD must consult with HCHSP to ensure the child receives the needed support services; and/or
- D. If a child does not have an IEP, HCHSP must collaborate, parental consent needed, with ISD personnel responsible for implementing the IDEA and initiating the **Response to Intervention (RTI)** protocol.

POLICY ON FEES:

- A. There are no fees associated with participation in collaborative ISD and HCHSP services; and
- B. No child will be disallowed from participation due to standardized dress.

EDUCATIONAL DESIGN:

Teachers and Instruction

- A. Each classroom may participate in library, computer, music and P.E. classes as scheduling allows;
- B. ISD will secure a substitute teacher in the event that the ISD teacher and/or TA is absent from duty. Costs incurred for ISD substitute will be paid by ISD;
- C. HCHSP will secure a substitute teacher in the event that the HCHSP teacher and/or HCHSP is absent from duty. Cost incurred for HCHSP substitute will be paid by HCHSP;
- D. ISD Principal will serve as supervisor and evaluator for ISD Pre-K teacher and TA as well as serve as a joint supervisor and evaluator for the HCHSP teacher and assistant, as applicable;
- E. HCHSP Campus Director will serve as supervisor and evaluator for the HCHSP teacher and TA as well as serve as joint supervisor and evaluator for the ISD Pre-K teacher and assistant, as applicable; and
- F. ISD Principal and the HCHSP Campus Director will communicate as needed regarding supervisory issues and ways the collaboration can be strengthened.

Curriculum

- A. ISD and HCHSP teachers will utilize a state-adopted, research-based curriculum in all collaboration classrooms that are aligned with Head Start **Early Learning Outcomes Framework (ELOF):** Ages Birth to Five, as per 45 CFR §1302.32, and that follows the Texas Pre-K Guidelines. The curriculum, developmentally appropriate materials, manipulatives, consumable supplies, and other resources for the classroom will be provided by ISD and HCHSP;
- B. ISD and HCHSP will collaborate in the decision-making process of selection of partnership Pre-K curriculum;
- C. In the event that ISD chooses to make significant adaptations to a curriculum to better meet the needs of one or more specific populations, these adaptations must be based on valid research and must have standardized procedures and curriculum materials to support implementation. In addition, ISD and HCHSP must assess whether the adaptation adequately facilitates progress toward meeting school readiness goals as per 45 CFR §1302.323;
- D. ISD and HCHSP teachers will co-plan with their TA's and with partnering collaboration classroom teachers on a weekly basis to coordinate theme-based, hands-on developmentally appropriate instructional activities;
- E. In accordance with ELOF, ISD and HCHSP teachers will utilize state adopted curriculum with fidelity and evidenced by weekly lesson plans that include: teaching objectives; whole and small group instruction; child directed learning centers, and outdoor play and learning experiences; and
- F. The school program for dual language learners must recognize bilingualism and biliteracy as strengths and implement research-based practices that support the student's development.

Schedule

- A. ISD and HCHSP will provide educational services at HCHSP and ISD campuses in accordance with campus hours;
- B. ISD and HCHSP will provide a thirty (30) minute duty-free lunch and minimum of forty-five (45) minutes for planning for classroom teachers in accordance with Texas Education Code Section 21.405; and

- C. ISD and HCHSP will provide a joint-planning and meeting time to ISD and Head Start teacher before the first day of the program year, when feasible.

Professional Development

- A. HCHSP teachers will be invited to appropriate ISD professional development during the program year that include ISD teachers;
- B. ISD teachers will be invited to appropriate HCHSP professional development during the program year that includes HCHSP teachers, and
- C. Collaboration teachers will be trained annually on Child Care Licensing regulations and HSPPS.

Screening/Assessment & Ongoing Progress Monitoring

- A. ISD will collaborate with HCHSP in the decision-making around TEA approved screening tools and Kindergarten Ready Assessment;
- B. Collaboration teachers will administer developmental screenings within 45 days of child enrollment;
- C. Collaboration teachers will administer assessments at the beginning, middle and the end of the year;
- D. HCHSP requires all classrooms to be assessed using the CLASS tool two (2) times annually and used to inform coaching strategies. ISD will allow outside evaluations to monitor or assess classrooms and instructional delivery using the CLASS assessment tool up to two (2) times annually as required by per 45 CFR Chapter XIII, HSPPS and the Head Start for School Readiness Act of 2007.

Educational Data

- A. ISD will work to ensure that HCHSP receives aggregated and de-identified assessment data for children currently and previously enrolled in Head Start to support TEA's Early Childhood Data System;
- B. HCHSP will request data be provided by location for kindergarten to 3rd grade for all children previously enrolled in Head Start, de-identified and in the aggregate;
- C. HCHSP and ISD will comply with **Health Insurance Portability Act (HIPPA)** and **Family Educational Rights and Privacy Act (FERPA)** with respect to all provided data;
- D. HCHSP & ISD designated the other party as an "educational official" for the purpose of FERPA. Educational data may not be shared with third parties that have not been designated as "education officials" or otherwise authorized by parent; and
- E. The responsibilities and commitments of each Party, as they relate to data sharing, is outlined in the Data Sharing Agreement and Process.

Coordination of Student Support & Supplementary Services

HCHSP will initiate meetings between ISD and HCHSP. Meetings will be held at least two (2) times annually to facilitate ongoing problem solving and evaluation of the collaboration. Additional meetings may be initiated by either agency as the need arises.

PHYSICAL ENVIRONMENT:

HCHSP and ISD will provide furniture and developmentally appropriate classroom materials in ISD classrooms. HCHSP and ISD will collaborate in supplying instructional consumable supplies and developmentally appropriate classroom materials.

COMPREHENSIVE FAMILY SERVICES & PARENT ENGAGEMENT:

- A. HCHSP Support Services Assistants will provide referral and family engagement services to all families participating in the collaboration;
- B. HCHSP Support Services Assistants will work with all families to develop family partnership Agreements and assist families to develop goals toward school readiness and family engagement outcomes, including family well-being, parent child relationships, families as life-long educators, families as learners, family engagement transitions, family connection to peers and the local community, and families as advocates and leaders;
- C. HCHSP provides and encourages opportunities to all families participating in the collaboration to attend a research-based Parent Curriculum training and bi-monthly or quarterly parent trainings;
- D. HCHSP provides and encourages all parents to participate in HCHSP Parent Committees, Policy Council and other parent advisory groups;

- E. Parents are encouraged to have ongoing communication with both HCHSP and ISD staff; and
- F. HCHSP will provide transition support to all collaboration families.

COMPREHENSIVE CHILD SERVICES:

- A. HCHSP Nutrition Director will generate and track referrals for any HCHSP child with documented concerns with height and /or weight;
- B. HCHSP Health Director will generate and track referrals for any HCHSP child to meet any treatment needs associated with health; and
- C. HCHSP Mental Health /Disability Director will generate and track referrals for any HCHSP child with a suspected mental health concern, behavior concern or developmental delay. The Specialist will collaborate with ISD staff on any follow-up recommendations associated with the referrals.

AMENDMENTS/TERMINATION:

In the event that funding no longer exists or is insufficient to pay the charges for services obtained hereunder, this contract shall terminate. No modification to this MOU shall be binding upon either party, unless the MOU is amended in writing and approved by both parties. Either party may terminate this MOU upon one-hundred eighty (180) day written notice to the other party. This MOU may also be terminated at any time upon mutual written agreement of the parties.

NON-ASSIGNMENT AND SUBCONTRACTING:

This Agreement is not assignable. Neither party shall sub-contract, assign or transfer any of the rights, responsibilities, obligations, tasks or performances under this agreement without the written consent of the other party.

ORAL AND WRITTEN AGREEMENTS:

All oral and/or written agreements between the parties hereto relating to the subject matter of this MOU that were made prior to the execution of this MOU have been reduced to writing and are contained herein. Any alterations, additions or deletions in the terms of this MOU shall not be binding unless made by written amendment executed by both parties.

INDEPENDENT CONTRACTORS:

Each party and the officers, employees, agents, subcontractors or other Consultants thereof shall not be deemed by virtue of this contract to be the officers, agents, or employees of the other party.

WAIVERS:

The parties expressly agree that no provision of this agreement is in any way intended to constitute a waiver by ISD of any immunities from suit or from liability that ISD may have operation of law, state or federal law. A waiver by either of the parties of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

ASSIGNMENTS:

The rights, responsibilities and duties under this contract are personal to the Consultant and shall not be transferred or assigned without the express prior written approval of the ISD.

NON-DISCRIMINATION:

Each party certifies that it is an equal opportunity employer. It conducts all business activities, including hiring, without regard to age, race, color, sex, disability, marital status, national origin, citizenship status, or other legally protected category.

GOVERNING LAW AND VENUE:

This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted, and applied in accordance with and governed by and enforced under the laws of the State of Texas and the parties hereto agree that venue shall be in Hidalgo County, Texas.

ALTERNATIVE DISPUTE RESOLUTION:

Claims and disputes associated with this contract will not be resolved by arbitration or other alternative dispute resolution process unless court ordered or otherwise mutually agreed to in writing by both parties.

CAPTIONS:

The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

SEVERABILITY:

In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included herein.

FORCE MAJEURE:

Neither party will be liable to the other party hereunder or in default under this Contract for failure of performance resulting from acts or events beyond the reasonable control of such party including by way of example and not limitation acts of God, civil disturbances, war and strikes.

NOTICES:

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

(1) To ISD:

McAllen Independent School District
c/o Dr. J.A. Gonzalez, Superintendent of Schools
2000 N. 23rd
McAllen, TX 78501

(2) To HCHSP:

Hidalgo County Head Start Program
c/o Ms. Irma Peña, Executive Director
1901 W. State Hwy 107
McAllen, TX 78504

ADDENDUMS:

Addendum(s) to this memorandum of understanding (MOU) may from time to time be modified, after collaboration between the administrative staff of HCHSP and ISD to accommodate school calendars, staff assignments at HCHSP and ISD campuses, and transfer of facilities. McAllen Independent School Board and Hidalgo County Commissioners Court hereby authorizes the ISD Superintendent and Head Start Executive Director to adjust school calendars, staff assignments and transfer of facilities as they deem necessary to effectuate this Memorandum of Understanding.

IN WITNESS WHEREOF, the Commissioners' Court and the McAllen Independent School Board acting by their duly authorized representatives, have executed this MOU to be effective as of the latest date on which is signed by the authorized representatives of the Parties.

McAllen Independent School District

Board of Trustees, President

Date

Hidalgo County Head Start Program

Honorable Richard Cortez
Hidalgo County Judge

Irma Peña, Executive Director
Hidalgo County Head Start Program

Date

Date

ATTEST:

Arturo Guajardo, Jr.
Hidalgo County Clerk

APPROVED AS TO FORM:
Ricardo González, P.C.
DBA, Oxford & González

Approved as to form:
Walsh Gallegos Treviño Kyle & Robinson P.C.
by: Leandra C. Ortiz
Leandra C. Ortiz (Age) is 2023 0926 (m)
Leandra C. Ortiz

By: _____
Ricardo González

Date Approved by Policy Council:
Date Approved by Commissioner's Court:

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

SUBJECT: Discussion and Possible Action on Memorandum of Understanding No. 2024-008 Hidalgo County Head Start Program for Special Education

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

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

Head Start Act Public Law 110-134 allows for Hidalgo County Head Start Program ("HCHSP") to coordinate and collaborate with McAllen Independent School District ("District") to manage a high-quality funded special education preschool program in the service area.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The purpose of the Memorandum of Understanding ("MOU") between the District and HCHSP is to develop and foster a cohesive partnership that provides a high quality special education program for children. Both parties agree to communicate and share leadership responsibilities to maximize resources; and to ensure that the program is developed, implemented, and reviewed annually to improve quality of services for special needs.

LEGAL REVIEW:

The MOU has been approved by legal counsel.

BUDGETARY CONSIDERATIONS:

Funding is included as part of MOU No. 2024-006.

RECOMMENDED BOARD ACTION:

Administration recommends that the Board of Trustees approve the Memorandum of Understanding No. 2024-008 Hidalgo County Head Start Program for Special Education, for a term of three (3) years, commencing on July 1, 2023 through June 30, 2026.

SUBMITTED BY: *Rosalba De Hoyos*

SUPERVISOR: _____

For further information contact:
Name: Rosalba De Hoyos
Office: (956) 618-6048
eMail: Rosaba.DeHoyos@mcallenisd.net

Approved for presentation to the Board of Education:

J. A. Douglas

187

Superintendent of Schools

Addendum to Memorandum of Understanding Between

Hidalgo County Head Start Program

And

McAllen Independent School District

The **Hidalgo County Head Start Program (HCHSP)** and **McAllen Independent School District (MISD)** agree to work collaboratively in providing special services to children with special needs aged 3 to 4 years old who are deemed eligible for early childhood education as set out herein.

The terms and conditions set forth herein shall constitute the entire Memorandum of Understanding (**MOU**) between the **HCHSP** and **MISD** and may not be amended except by a written document signed by **HCHSP** and **MISD**.

McAllen Independent School District “MISD” will:

- A. Diagnose and document the results of children referred from the HCHSP upon completion of the multi-disciplinary evaluation in an attempt to timely evaluate the children with disabilities;
- B. The **HCHSP** staff will timely notify the parent(s) in writing of the Individual Education Plan (IEP) meeting prior to scheduled date. The IEP meeting will be conducted in accordance with legal requirements of completing the child’s evaluation and in the parent’s dominant language;
- C. Provide special education and related services as set forth in child’s IEP and the Consent for Placement.
- D. Provide in-service training for Head Start staff as deemed necessary by both parties;
- E. Provide necessary special education and related services in accordance with the state and federal statutes and regulations to enrolled children;
- F. Participate in resource sharing (i.e. equipment, materials, staff, etc.);
- G. Provide on-site (at Head Start Center) services when deemed appropriate in the child’s classroom to the greatest extent possible, in accordance with Head Start Performance standards 1302.61 (c)(v);
- H. To the extent authorized by law provide the HCHSP with progress reports on any children receiving special services every six (6) weeks. Head Start will secure parental consents;
- I. Provide appropriate records for those children exiting the program;
- J. Abide by the U.S. Department of Health and Human Services final regulations pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA);
- K. Provide Special Education and related services by personnel meeting certification requirements;
- L. Complete and maintain the required documentation for **MISD** and the **HCHSP** staff with the assistance of both Human Resources Departments; and
- M. Follow **MISD** requirements, policies and procedures as well as the Head Start Performance

Standards and the Texas Child Care Licensing Minimum Standards.

Hidalgo County Head Start “HCHSP” will:

- A. Assist **MISD** in the location of children with disabilities through participation in Child Find activities (clinics, fairs, meetings, etc.);
- B. Participate in joint training for staff and parents;
- C. Secure parental consent for referral to LEA after completing the required screening/assessment for those children showing a delay of six (6) months or more in any area or who were identified by parents or physicians as needing further evaluation;
- D. Participate in resource sharing (i.e. equipment, materials, staff, etc.);
- E. Assist in the **MISD’s** Fall PEIMS Snapshot child count as appropriate;
- F. Participate in the development and implementation of the IEP as appropriate;
- G. Transport and provide translation services as needed by parents to attend IEP meetings when requested. Also provide transportation for children as necessary to participate in off-site related services;
- H. Complete health screenings on all children, within forty-five (45) days of enrollment, as required in the Head Start Performance Standards;
- I. Abide by the U.S. Department of Health and Human Services final regulations pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA);
- J. Maintain the children’s, families’, and programmatic records in a manner that will assure the protection of the rights and privacy of parents, families, and staff. All **HCHSP** records, data, or information related to individual children, families, and staff will be treated as confidential. Release of information will take place only with parent or guardian’s prior written consent and approval; and
- L. Follow CDC Guidelines and HCHSP work safe plans due to Covid-19 pandemic.

Collaboration Efforts between McAllen Independent School District and HCHSP:

- Both parties agree to refer clients as appropriate to each other. Services to the client will be based upon the needs of said client and the receiving agency’s or program’s ability to provide services as required by the provisions of each parties’ respective program to the client.
- Both parties agree that they will exchange reports describing services rendered between each other and programs on a regular basis and when possible, to participate and collaborate in shared forums, networking meetings, and training sessions.

Term/Termination:

Termination provisions of this agreement will be subject to the MOU between Hidalgo County Head Start and McAllen ISD in accordance with the provisions set forth in the agreement.

Term:

This **MOU** is in effect commencing on **July 1, 2023** and terminates on **June 30, 2026**, unless earlier terminated as provided herein.

Governing Law:

This Memorandum of Understanding will be construed in accordance with the Laws of the State of Texas and is performable in Hidalgo County, Texas.

Consideration:

This **MOU** is being made in consideration of the following: **McAllen Independent School District** and **Hidalgo County Head Start Program** agree that there will be no financial exchange of monies or other compensation. The parties further agree that they will retain all programmatic revenues generated by the operation of their respective programs.

Executed and effective as of the date of the last signature shown herein below.

McAllen Independent School District

Dr. Jose A. Gonzalez, Superintendent of Schools

Date

Maribelle Elizondo, Special Education Director

Date

Hidalgo County Head Start Program

Honorable Richard Cortez
Hidalgo County Judge

Irma Peña, Executive Director
Hidalgo County Head Start Program


Date

Date

ATTEST:

Arturo Guajardo, Jr.
Hidalgo County Clerk

Approved As To Form:
Ricardo González
DBA, Oxford & González

Approved As To Form:
O'Hanlon, Demerath & Castillo
by: 

Kevin O'Hanlon,


By: _____
Ricardo González

AI- 89708
Date approved by Policy Council: 2-15-2023
Date approved by Commissioner's Court: 2-17-2023

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

SUBMITTED BY: 

SUPERVISOR: 
Alejandra Gonzalez (May 5, 2023 10:14 CDT)

Approved for presentation to the Board of Education:



191 _____
Superintendent of Schools



AIA[®]

Document A133[®] – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 8th day of May in the year TWO THOUSAND TWENTY THREE
(In words, indicate day, month, and year.)

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

McAllen Independent School District, a public school district and political subdivision of the State of Texas
2000 North 23rd Street
McAllen, TX 78501
Phone: (956) 618-6000
Fax: (956) 986- 8362

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

Noble Texas Builders, LLC, a limited liability company of the State of Texas
108 S. Main Street
La Feria, TX 78559
Phone: (956) 277-0708
Email: juan.delgado@nobletx.net

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

RFP No. 2023-1008 Construction Manager-At-Risk Services (CMAR) McAllen High School, McAllen Memorial High School, and James "Nikki" Rowe High School New Mariachi and Black Box Buildings (Owner Contract 2023-202) at the following campus locations:

McAllen High School
2021 La Vista Ave.
McAllen, TX 78501

McAllen Memorial High School
101 E Hackberry Ave.
McAllen, TX 78501

James "Nikki" Rowe High School
2101 N Ware Rd.
McAllen, TX 78501

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

Chanin Engineering, LLC, a limited liability company of the State of Texas

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

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

AIA Document A201[™]-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

400 Nolana Suite H2
McAllen, TX 78504
Phone: (956) 687-9421
Fax: (956) 687-3211

*In this Agreement, any reference to "Architect" herein shall mean "Engineer".

The Owner and Construction Manager agree as follows.

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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

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EXHIBIT C CONSTRUCTION MANAGER'S RESPONSE TO REQUEST FOR PROPOSAL

EXHIBIT D PAYMENT AND PERFORMANCE BONDS – [to be provided on execution of GMP Amendment]

EXHIBIT E CONSTRUCTION MANAGER'S INSURANCE CERTIFICATES

EXHIBIT F CONSTRUCTION MANAGER-AT-RISK EXPECTATIONS

EXHIBIT H OWNER'S REQUEST FOR PROPOSALS

EXHIBIT I PLANS AND SPECIFICATIONS

NOTE: Any reference hereinafter this one, to an AIA™ Document or any AIA Documents included in the Contract Documents shall refer to such document "as modified for this Project". In addition, any reference to AIA Documents shall all be considered to have included the Trademark "™" after the AIA reference, whether or not included in the text. The AIA Documents are registered intellectual property of the American Institute of Architects and use and amendment of

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User Notes:

(1364279650)

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Construction of Mariachi buildings and black box buildings for the three traditional high schools: McAllen High School, McAllen Memorial High School, and James "Nikki" Rowe High School

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

To be determined

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

(Provide total and, if known, a line item breakdown.)

TWELVE MILLION DOLLARS AND NO CENTS (\$12,000,000.00)

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

To be determined

.2 Construction commencement date:

To be determined

.3 Substantial Completion date or dates:

To be determined

.4 Other milestone dates:

To be determined

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:

(Identify any requirements for fast-track scheduling or phased construction.)

N/A

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed

E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere.)

To be determined

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:

(List name, address, and other contact information.)

Dr. Jose A. Gonzalez
Superintendent of Schools
McAllen Independent School District
2000 North 23rd St.
McAllen, TX 78501
Phone: (956) 618-6000
Fax: (956) 686-8362E-mail: jose.gonzalez@mcallenisd.net

§ 1.1.9 The persons or entities, in addition to the Owner’s representative, who are required to review the Construction Manager’s submittals to the Owner are as follows:

(List name, address and other contact information.)

To be determined

§ 1.1.10 The Owner shall retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

.2 Civil Engineer:

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

Chanin Engineering, LLC.
400 Nolana Suite H2
McAllen, TX 78504
Phone: (956) 687-9421
Fax: (956) 687-3211

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

Juan Delgado, Vice President
Noble Texas Builders, LLC, a limited liability company of the State of Texas
108 S. Main Street
La Feria, TX 78559
Phone: (956) 277-0708
Email: juan.delgado@nobletx.net

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

As provided herein

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

As provided herein

§ 1.1.15 Other Initial Information on which this Agreement is based:

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

(Paragraphs deleted)

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 .If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner’s requirements, for the Owner’s review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders’ interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect’s review and the Owner’s acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document.

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

Exhibit F

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner’s and Architect’s review, and the Owner’s acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager’s estimate of the Cost of the Work, the Construction Manager’s contingency described in Section 3.2.4, and the Construction Manager’s Fee described in Section 6.1.2 and the Construction Manager’s compensation for General Conditions. The Guaranteed Maximum Price as proposed shall be calculated as follows:

Estimated Cost of the Work PLUS
Fee (Estimated Cost of the Work TIMES percentage) PLUS
General Conditions
EQUALS Guaranteed Maximum Price Proposed.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2 ;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager’s contingency set forth in Section 3.2.4; and the Construction Manager’s Fee;

- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 Upon approval of the form of the Guaranteed Maximum Price Proposal by the Owner's Representative and Architect, the Guaranteed Maximum Price Proposal will be placed on the Board Agenda for approval by the Board of Trustees. Following acceptance of a Guaranteed Maximum Price Proposal by the Board, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment prepared by legal counsel for the Owner amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price and incorporate the information and assumptions from the Construction Manager's Guaranteed Maximum Price Proposal upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment and issuance of Owner's Notice to Proceed, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall not include in the Guaranteed Maximum Price any sales, consumer, use and similar taxes for the Work provided by the Construction Manager for which a Texas independent school district is exempt. Upon request the Owner will provide the Construction Manager with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes. No such taxes shall be reimbursable costs under this Contract.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate Subcontractors discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. 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 other 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 a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Construction Manager’s performance of the Work with reasonable promptness after receiving the Construction Manager’s written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner’s Designated Representative

The Owner is the Board of Trustees of the McAllen Independent School District, and is referred to throughout the Contract Documents as if singular in number. The Board of Trustees, by majority vote, is the only representative of the Owner, an independent school district, having the power to enter into and amend a contract, to approve changes in the scope of Work, to approve and execute a Change Order or Construction Change Directive modifying the Guaranteed Maximum Price, to agree to an extension to the date of Substantial or Final Completion or to terminate a contract. The Owner may designate in writing one or more persons to represent the Owner with respect to the day-to-day activities of the Project; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority.

§ 4.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner’s needs and interests.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect’s scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager’s Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

ELEVEN THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$11,500.00)

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager’s Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

N/A

Individual or Position

Rate

§ 5.1.2.1

§ 5.1.3 Compensation for Preconstruction Services shall be equitably adjusted if the originally contemplated scope of services is significantly modified.

§ 5.2 Payments

§ 5.2.1 If the Construction Phase Services do not commence for any reason, compensation for Preconstruction Services shall be made in accordance with Section 5.1.1 upon termination of the Agreement.

§ 5.2.2

(Paragraphs deleted)

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ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee plus the General Conditions Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

The Construction Manager's Fee shall be THREE AND SEVENTY-FIVE ONE HUNDREDTHS Percent (3.75%) of the actual Cost of the Work as defined in Article 7. For purposes of clarity, the Construction Manager's fee shall **not** be calculated as a percentage of the Contract Sum, the Guaranteed Maximum Price or the Construction Budget. No Construction Manager's Fee shall be paid on the Construction Contingency until funds are allocated from the contingency to the Cost of the Work.

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

Only by action of the Owner's Board of Trustees

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed percent (%) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

The Construction Manager and the Construction Manager's surety shall be liable for and shall pay to the Owner the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the Work is substantially completed: FIVE HUNDRED DOLLARS (\$500.00).

§ 6.1.7 General Conditions Costs (Project Site Costs) To Be Reimbursed

§ 6.1.7.1 The Construction Manager's General Conditions Costs shall be reimbursed each month based on the following formula: The actual Cost of the Work (as defined herein) multiplied by SIX AND EIGHTY FIVE ONE HUNDRETHS percent (6.85%). The Construction Manager's Fee shall not be included in the Cost of the Work prior to figuring the General Conditions Costs.

§ 6.1.7.2 The term General Conditions Costs shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The General Conditions Costs shall not be compensated based on actual cost, and include only the items set forth in Exhibit G.

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

(Paragraphs deleted)

§ 6.3.5. If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Paragraphs deleted)

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

(Paragraph deleted)

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. In no event will the cost reimbursable for the insurance required by contract exceed 0.5% of the GMP contract value.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, for materials that are related to the Work but not incorporated in the Work and for which the Construction Manager is liable and Owner is not exempt. Construction Manager shall be obligated to take reasonable care to obtain all applicable tax exemptions.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval to the extent same are not compensated under general conditions, are directly attributable to and required for the Work, and are approved by the Owner, in writing.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain proposals in accordance with Section 9.3 below. The Construction Manager shall obtain proposals from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such proposals to the Architect and Owner with an indication as to which proposals the Construction Manager determines provide the best value to the Owner, and therefore, intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a proposal that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another proposal be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the proposal of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner. Construction Manager shall state the additional cost in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

(Paragraphs deleted)

§ 9.3 Pursuant to Texas Government Code Chapter 2269, Subchapter F, the Construction Manager shall publicly advertise and obtain proposals from Subcontractors for the performance of all major elements of the Work. To the extent an element of the Work is included in the General Conditions Costs, it is not considered a major element of the Work and shall not be procured under this Section 9.3. All bids or proposals shall be sent directly to Construction Manager.

§ 9.3.1 The Construction Manager the Owner Representative, and Project Manager, if any, shall receive and open all subcontractor proposals in a manner that does not disclose the contents of the proposals during the selection process to a person not employed by the Construction Manager, Architect, Engineer or Owner. The Construction Manager shall review and evaluate all bids or proposals, and shall recommend to the Owner a list of bidders to which the Construction Manager proposes to award subcontracts for the Project Work.

§ 9.3.2 In the event that the Owner requires that the Construction Manager to award any portion of the work to a subcontractor not proposed as best value by the Construction Manager, the Owner shall compensate the Construction Manager by a change in price, time, or Guaranteed Maximum Price for any additional cost or risk that the Construction Manager may incur by reason of the Owner's requirements. Construction Manager shall state the additional cost and/or risk in writing and shall provide written proof of same before Owner compensates Construction Manager.

§ 9.3.3 The Construction Manager shall deliver a copy of all advertising, solicitation documents, proposals, evaluations of proposals and all documents relevant to the Guaranteed Maximum Price proposal to the Owner with the Guaranteed Maximum Price proposal.

§ 9.3.4 The Construction Manager shall make all bids and proposals available for public inspection within seven (7) days following final selection of the subcontractors.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the thirteenth day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than forty-five (45) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate Guaranteed Maximum Price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

§ 11.1.7.1 The amount of each progress payment shall be computed as follows:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values, pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add that portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 Add the Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of

the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

.5 Add the Construction Manager's General Conditions Costs computed based upon the Cost of the Work completed during the period covered by the Payment Application multiplied by the percentage rate stated in Section 6.1.7.1

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Five Percent (5%)

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

N/A

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

There shall be no reduction or limitation or modification of retainage prior to Final Completion.

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

Upon Owner's audit and reconciliation

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

Init.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, for each Work, (if multiple Projects) shall be made by the Owner to the Construction Manager when

- .1** the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2** the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;
- .3** a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2;
- .4** The Construction Manager certifies to the Owner that the Project, to the best of the Construction Manager's knowledge, has been constructed in general accordance with Architect's Construction Documents, the certificate shall be the Texas Education Agency's Certification of Project Compliance, signed by a duly authorized officer of the Construction Manager and properly notarized;
- .5** Construction Manager has provided all documents required by Section 9.10.2 of AIA Document A201-2017; and
- .6** Owner's Board of Trustees has voted to accept the Work and approve Final Payment.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within ten (10) days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment or in the event of mediation, no later than 30 days after the execution of the Settlement agreement, if any.

§ 11.2.4 .

The amount of final payment shall be calculated as follows:

- .1 Begin with the actual Cost of Work substantiated by the Construction Manager’s final accounting which includes deductions for all discounts and unused contingencies and construction savings achieved in the Cost of Work, if applicable.
- .2 Add the actual expended General Conditions costs substantiated by the Construction Manager’s final accounting which includes savings to the Owner for unused General Conditions.
- .3 Add the Construction Manager’s Fee.
- .4 Subtract amounts, if any for which Architect or Owner disputes, refuses or withholds payment, if any.
- .5 If Construction Manager fails or refuses to complete the Work, or has unsettled claims with Owner then subtract such amounts as Architect shall determine as the cost for completing incomplete work and the value of unsettled claims.
- .6 Subtract all previous payments made by Owner.
- .7 In no event shall the total of subsections .1, .2 and .3 above exceed the Guaranteed Maximum Price.
- .8 If the aggregate of previous payment made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate *(Paragraphs deleted)* set out in the Texas Prompt Payment Act, Texas Government Code Chapter 2251.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. *(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows: *(Check the appropriate box.)*

- Arbitration pursuant to Article 15 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause. The Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that

bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;

- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner’s convenience.)

. In the event such termination is for the convenience of the Owner, the Construction Manager shall be compensated for reasonable costs incurred prior to notice of termination, profits on only that portion of the work actually performed prior to termination, and reasonable demobilization costs

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager’s Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner’s rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Insurance

For all phases of the Project, the Construction Manager shall purchase and maintain the following insurance for the duration of the Preconstruction and Construction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than ONE MILLION DOLLARS (\$ 1,000,000) for each occurrence and TWO MILLION DOLLARS (\$ 2,000,000) in the aggregate for bodily injury and property damage. Excess Umbrella Insurance with policy limits of not less than FIVE MILLION DOLLARS (\$ 5,000,000).

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than ONE MILLION DOLLARS (\$ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than ONE MILLION DOLLARS (\$ 1,000,000) each accident, ONE MILLIONS DOLLARS (\$ 1,000,000) each employee, and ONE MILLION DOLLARS (\$ 1,000,000) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than ONE MILLION DOLLARS (\$ 1,000,000) per claim and TWO MILLIONS DOLLARS (\$ 2,000,000) in the aggregate.

§14.3.1.6 **All Risk Builders Risk** against the perils of fire, lightening, windstorm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, vandalism, malicious mischief, and all other perils in the amount one hundred percent (100%) of the value of the improvements including transit and materials stored off site. Additionally, this coverage shall provide protection to the full replacement value for boiler and machinery equipment up to installation, during testing, and until acceptance by Owner.

§ 14.3.1.6 **Other Insurance**

(Table deleted)(Paragraph deleted)

§ 14.3.1.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 **Bonds**

For all phases of construction, the Construction Manager shall purchase and maintain performance and payments bonds in the coverages and amounts as required by state law and set forth herein.

§ 14.3.2.1 [Paragraph Deleted]

§ 14.3.2.2 As required by Chapter 2253 of the Texas Governmental Code, the Construction Manager is required, as a condition precedent to the execution of the Contract, to execute a PERFORMANCE BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the Contract Sum, and a PAYMENT BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the Contract Sum as security for payment of all persons performing labor and furnishing materials in connection with this Contract. (Bonding Company is to furnish such forms). All bonds shall name the Owner as additional obligee.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or .as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5 Other provisions:

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

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

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

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

§ 14.5.5 Pursuant to Texas Education Code §22.08341, Construction Manager shall obtain criminal history record information through the Fingerprint-Based Applicant Clearinghouse of Texas ("FACT Clearinghouse"), for all of Construction Manager's Covered Employee in accordance with the requirements of Section 3.4.5 of the AIA Document A201™–2017, General Conditions of the Contract for Construction.

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

§ 14.5.7 Pursuant to Texas Government Code Chapter 2274, if this contract is valued at \$100,000 or more and if Construction Manager has at least ten (10) full-time employees, then Construction Manager represents and warrants to the Owner that the Construction Manager does not discriminate against firearm entities or firearm trade associations and will not discriminate against firearm entities or firearm trade associations during the term of this Agreement. This provision does not apply to sole proprietorships.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction 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 Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 [Subsection Deleted]
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction

.5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

.6 Other Exhibits:
(Check all boxes that apply.)

AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

Supplementary and other Conditions of the Contract:

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

- Exhibit B Modified AIA Document A201™–2017, General Conditions of the Contract for Construction
- Exhibit C Construction Manager’s Response to Request for Proposal
- Exhibit D Payment And Performance Bonds [to be provided on execution of GMP Amendment]
- Exhibit E Construction Manager’s Insurance Certificates
- Exhibit F Construction Manager-At-Risk Expectations
- Exhibit G Construction Manager-At-Risk General Conditions
- Exhibit H Owner’s Request For Proposals
- Exhibit I Plans and Specifications

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

McALLEN INDEPENDENT SCHOOL DISTRICT		NOBLE TEXAS BUILDERS, LLC.
OWNER <i>(Signature)</i>		CONSTRUCTION MANAGER <i>(Signature)</i>
Tony Forina, Board President, McAllen Independent School District Board of Trustees <i>(Printed name and title)</i>		Juan Delgado, Vice President, Noble Texas Builders, LLC. <i>(Printed name and title)</i>

APPROVED AS TO FORM:
WALSH GALLEGOS TREVÑO KYLE & ROBINSON, P.C.

P Blake Henshaw
BLAKE HENSHAW



2023-1008 Addendum 3 Noble Texas Builders LLC Supplier Response

Event Information

Number: 2023-1008 Addendum 3
Title: Construction Manager at Risk Services McAllen High School, McAllen Memorial High School and James "Nikki" Rowe High School New Mariachi and Black Box Buildings
Type: Request for Proposal
Issue Date: 5/26/2022
Deadline: 6/8/2022 10:00 AM (CT)
Notes: **Correction on Project title:**
Construction Manager at Risk Services McAllen High School, **McAllen** Memorial High School and James "Nikki" Rowe High School New Mariachi and Black Box Buildings

McAllen Independent School District (the "District") invites your proposal on the referenced project.

Interested respondents may obtain specifications through Ionwave. The District prefers and encourages contractors to submit their proposals electronically through IonWave.

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

*Do not contact the Architect/Engineer or Project Manager.

Contact Information

Contact: Graciela Garza Senior Buyer

Address: Purchasing Services
Administration Office
2000 N 23rd St
McAllen, TX 78501-6126

Phone: (956) 6574487

Fax: (956) 6574481

Email: ggarza@mcallenisd.net

Noble Texas Builders LLC Information

Contact: Jose Castro
Address: 108 S. Main Street
La Feria, TX 78559
Phone: (956) 277-0708
Email: jose.castro@nobletx.net

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

Jose Castro
Signature

jose.castro@nobletx.com
Email

Submitted at 6/8/2022 7:57:47 AM

Requested Attachments

1295 Certificate

1295 Form.pdf

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

If not applicable to your company, please attach a statement indicating the reason. (refer to attribute # 3)

W9 Form

Noble Texas Builders, LLC. W-9.pdf

Please upload your completed W9 form. (refer to attribute # 5)

Assumed Name Certificate/ Fictitious Name Documentation/Disregarded Entity Documentation

No response

Upload your Assumed Name Certificate/ Fictitious Name Documentation/Disregarded Entity Documentation (refer to attribute # 6)

HUB Certificate

HUB Certificate_Noble 2024.06.29.pdf

Upload your HUB Certificate, if applicable (refer to attribute # 32).

Supplier Letters

Supplier Letters.pdf

Upload your supplier reference letters (refer to Line Item # 14).

Workers Compensation Experience Rating

Workers Compensation Experience Rating.pdf

Upload your Workers Compensation Experience Rating form for the last 3 years (refer to Line item # 15).

OSHA Form 300 Log of Work-Related Injuries and Illnesses

2021 - OSHA 300A.pdf

Upload your OSHA form 300 log of work-related injuries and illnesses for the last three (3) years (refer to Line item # 16).

Safety Program Manual and/or Procedures

Noble Safety Manual.pdf

Upload your company's safety program manual and/or procedures for current and new employees (Refer to line item # 17).

Drug/Alcohol Prevention Policy and/or Procedures

Drug-Alcohol Prevention Policy and or procedures.pdf

Upload your drug/alcohol prevention policy and/or procedures (refer to line item # 18).

Surety Letter

Noble capacity letter.pdf

Upload letter from Surety company (refer to line item # 19)

Financial Statement

2021 Financial Statement - Noble Texas Builders.pdf

Upload your CURRENT financial statement (refer to line item # 20).

Bid Bond

BID BOND.pdf

Upload Bid Bond (Refer to Line Item # 21).

Insurance Certificate (Acord Form)

Insurance Certificate.pdf

Upload your Certificate of Insurance in Acord form. (refer to section 8 of Terms and Conditions)

Conflict of Interest Questionnaire (CIQ) Form

CIQ Form.pdf

Upload your completed Conflict of Interest Questionnaire. If no conflict, indicate "N/A" (not applicable) on the form.

Bid Attributes

1	PLANS/DRAWINGS, TECHNICAL SPECIFICATIONS, AND TERMS AND CONDITIONS Review the documents in the "Attachments" tab. Acknowledge you have read, understood, and certify. **This is your electronic signature. <input checked="" type="checkbox"/> I have read, understood, and certify. (I have read, understood, and certify.)
2	Deviations and Exceptions If your company intends to deviate from the Specifications listed in the solicitation attached documents, all such deviations and exceptions must be listed here, with complete and detailed conditions and information included. The District reserves the right to accept or reject any proposals based upon any deviations indicated below. If none, enter N/A (Not Applicable). <input type="text" value="Not Applicable"/>
3	Form 1295 - Certificate of Interested Parties The Texas Government Code §2252.908, and the rules issued by the Texas Ethics Commission found in Title 1, Sections 46.1, 46.3 and 46.5 of the Texas Administrative Code, require a business entity to submit a completed Form 1295 before the District may enter into a contract with that business entity. Form 1295 must be submitted with your proposal and is required as condition of award. Form must be completed online. Access form at: <ul style="list-style-type: none">• http://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm• Complete the form• Enter solicitation number and name• Print and sign form• Attach form on "Response Attachments" tab If exempt, attach documentation. <input checked="" type="checkbox"/> I have read and understand. (I have read and understand.)
4	Delinquent Taxpayers In accordance with law, the District shall not enter into a contract or other transaction with a person indebted to the District, nor shall the District award a contract to or enter into a transaction with any proposer indebted to the District. **This is your electronic signature. <input type="text" value="I am NOT a delinquent taxpayer to McAllen ISD"/>

5 Provide the business name as it is registered with the Texas Comptroller, or similar. *Note: the name must match IRS registration and W-9 form.
Attach Completed W9 under response attachments
Noble Texas Builders, LLC.

6 Does your company have a business name on Line 2 of the W-9? If yes, attach an Assumed Name Certificate/Fictitious Name issued by the State/County (on the "Response Attachments" tab).
 Yes (upload Assumed Name Certificate) (Yes (upload Assumed Name Certificate))
 No (No)

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

Select where applicable:

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

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

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

**This is your electronic signature.
B. My company is not owned nor operated by a felon

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

9 Criminal History Record Information Review of Certain Contract Employees

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

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

OR

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

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

**This is your electronic signature.

A. None - I hereby agree and certify.

1 Confidential/Copyrighted Information

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

**This is your electronic signature.

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

1 1	Declaration of Business Location - Texas Education Code 44.031(b)(8) Bidder certifies the Bidder's or the Bidder's ultimate parent company or majority owner: A. Has its principal place of business in the State of Texas; OR B. Employs at least 500 persons in the State of Texas C. Principal place of business is not in the State of Texas. **This is your electronic signature. <input type="text" value="A. Principal place of business is in TX"/>
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1 2	Declaration of Business Location - Texas Education Code 44.031(b)(8) Specify principal place of business (City/State). If not applicable, please enter N/A (not applicable). ***This is your electronic signature. <input type="text" value="La Feria, Texas 78559"/>
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1 3	Prohibition on Contracts with Companies Boycotting Certain Energy Companies (SB 13) If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies by submitting its proposal that, pursuant to Texas Government Code Chapter 2274, it does not boycott energy companies; and will not boycott energy companies during the term of the Agreement. This verification is not required for an agreement where a governmental entity determines that these requirements are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds. **This is your electronic signature. <input checked="" type="checkbox"/> I have read and hereby certify. (I have read and hereby certify.)
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1 4	Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries (SB 19) If Contractor is a company with 10 or more full-time employees and if this Agreement has a value of at least \$100,000 or more, Contractor verifies by submitting its proposal that, pursuant to Texas Government Code Chapter 2274, it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. **This is your electronic signature. <input checked="" type="checkbox"/> I have read and hereby certify. (I have read and hereby certify.)
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Entities That Boycott Israel

If (a) Vendor is not a sole proprietorship; (b) Vendor has ten (10) or more full-time employees; and (c) this Agreement has a value of \$100,000 or more, the following certification shall apply; otherwise, this certification is not required.

Pursuant to Chapter 2270 of the Texas Government Code, the Vendor hereby certifies and verifies that neither the Vendor, nor any affiliate, subsidiary, or parent company of the Vendor, if any (the "Vendor Companies"), boycotts Israel, and the Vendor agrees that the Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

**This is your electronic signature.

I agree and hereby certify. (I agree and hereby certify.)

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

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

**This is your electronic signature.

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

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TEXAS GOVERNMENT CODE Sec. 2252.153. LISTED COMPANIES

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

Vendor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State.

**This is your electronic signature.

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

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Non-Collusion Statement

Vendor certifies under penalty of perjury that its response to this procurement solicitation is in all respects bona fide, fair and made without collusion or fraud with any person, joint venture, partnership, corporation or other business or business or legal entity.

**This is your electronic signature.

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

19 Contracts in Excess of \$250,000
Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**This is your electronic signature.

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

20 Contracts in Excess of \$10,000
All contracts in excess of \$10,000 must address termination for cause and for convenience including the manner by which it will be affected and the basis for settlement.

**This is your electronic signature.

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

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

**This is your electronic signature.

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

22 Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)
When required by Federal program legislation, all prime construction contracts in excess of \$2,000 must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146- 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non- Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**This is you electronic signature.

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

23 Contract Work Hours and Safety Standards Acts (40 U.S.C. 3701-3708)

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**This is your electronic signature.

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

24 Rights to Inventions Made Under a Contract or Agreement

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

**This is your electronic signature.

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

25 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended

Contracts and subgrants of amounts in excess of \$250,000 must contain a provision that requires the award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**This is your electronic signature.

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

26 (H) Debarment and Suspension (Executive Orders 12549 and 12689)

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

Pursuant to Federal Rule (H) above, when federal funds are expended by the District, the vendor certifies that during the term of an award for all contracts by the District resulting from this procurement process, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency or by the State of Texas. Vendor shall immediately provide written notice to the District if at any time the vendor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The District may rely upon a certification of a vendor that the vendor is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless the District knows the certification is erroneous.

**This is your electronic signature.

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

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Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

Contractors that apply or submit an offer for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the award.

**This is your electronic signature.

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

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

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

**This is your electronic signature.

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

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

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

**This is your electronic signature.

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

3 0 2 C.F.R. § 200.322 CERTIFICATION OF DOMESTIC PREFERENCES FOR PROCUREMENTS AND COMPLIANCE WITH BUY AMERICA PROVISIONS

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

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

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

**This is your electronic signature.

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

3 1 2 C.F.R § 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms

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

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

**This is your electronic signature.

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

3 2 Texas Historically Underutilized Businesses (HUB) – Texas Education Code 44.031(b)(6) or Small and Minority Firms, Women's Business Enterprises, & Labor Surplus Area Firms

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

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

**This is your electronic signature.

3 3	<p>2 C.F.R § 200.334 RECORDS RETENTION REQUIREMENTS</p> <p>Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Contractor certifies that Contractor is in compliance with all applicable provisions of 2 CFR 200.334.</p> <p>**This is your electronic signature.</p> <p><input checked="" type="checkbox"/> I have read and hereby certify. (I have read and hereby certify.)</p>
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3 4	<p>Buy American Provision</p> <p>Contractor certifies that Contractor is in compliance with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must still follow the applicable procurement rules calling for free and open competition.</p> <p>**This is your electronic signature.</p> <p><input checked="" type="checkbox"/> I have read and hereby certify. (I have read and hereby certify.)</p>
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3 5	<p>Federally Funded Purchases</p> <p>Contractor certifies that Contractor is in compliance with all applicable provisions for federally funded purchases.</p> <p>**This is your electronic signature.</p> <p><input checked="" type="checkbox"/> I have read and hereby certify. (I have read and hereby certify.)</p>
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3 6	<p>Addendum</p> <p>Bidder/Respondent acknowledges that he/she will download and review all addenda issued on this project, if applicable.</p> <p>**This is your electronic signature.</p> <p><input checked="" type="checkbox"/> I have read and hereby acknowledge. (I have read and hereby acknowledge.)</p>
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3 7	<p>Has your organization operated under any former names?</p> <p><input type="checkbox"/> Yes (Yes)</p> <p><input checked="" type="checkbox"/> No (No)</p>
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3 8	<p>If you company has operated with former names. Please list names.</p> <p>Not Applicable</p>
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Bid Lines

1	<p>Pre-Construction Services Cost</p> <p style="text-align: right;">Price: <input type="text" value="\$11,500.00"/> Total: <input type="text" value="\$11,500.00"/></p> <p>Item Notes: Provide cost estimate, scheduling, building systems, material, cost analysis, etc.</p>
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2	<p>CM's Fee</p> <p>Item Notes: See Attachment B</p>
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Item Attributes

1. See Attachment B

3.75%

3 General Conditions Fee

Item Attributes

1. General Conditions Fee

6.85%

4 *Line deleted as part of an Addendum*

5 List any MISD projects completed within the past five (5) years (2017-2021)

Item Attributes

1. Project Name

(1). 2020 – MISD District Wide Water fountains replacements \$315,920 (2). 2019 – Memorial HS Cafeteria renovation Phase 1: \$287,561.86 Phase 2: \$1,169,000 (3). 2019 – MCHI Gym Auditorium renovation \$42,544 (4). 2018 – MISD Lamar Fence project \$11,021 (5.) 2017 – MISD welding shop electrical work \$18,000

6 List Texas Public School CMAR Projects constructed by your organization over the last five (5) years. (2017-2021)

Item Attributes

1. Project # 1 Project Name

Brooks County High School Stem Bldg

2. Project # 1 Nature of the Project/Function of the building

Ground up 1 story stem lab with classrooms, and restrooms

3. Project # 1 Size/Square footage

36711

4. Project # 1 Location

Falfurrias, TX

5. Project # 1 Project Cost

\$1334331

6. Project # 1 Delivery Method

CMAR

7. Project # 1 Date of Notice to Proceed

6/30/2021

8. Project # 1 Contractual Completion Date

12/17/2021

9. Project # 1 Actual Completion Date

11/30/2021

10. Project # 1 Owner

Brooks County CISD

11. Project # Architect

Gignac Architects

12. Project # 2 Project Name

Jubilee Leadership academy

13. Project # 2 Nature of the Project/Function of the building

New Middle school, with Gymnasium

14. Project # 2 Size/Square footage

47,077

15. Project # 2 Location

Harlingen TX

16. Project # 2 Project Cost

\$7489955

17. Project # 2 Delivery Method

CMAR

18. Project # 2 Date of Notice to Proceed

11/27/2018

19. Project # 2 Contractual Completion Date

8/16/2019

20. Project # 2 Actual Completion Date

7/25/2019

21. Project # 2 Owner

Performance CSD

22. Project # 2 Architect

Mussman Architect

23. Project # 3 Project Name

STC Center for Public Safety

24. Project # 3 Nature of the Project/Function of the building

Educational training facility for law enforcement

25. Project # 3 Size/Square footage

19000

26. Project # 3 Location

Pharr, TX

27. Project # 3 Project Cost

\$7522292

28. Project # 3 Delivery Method

CMAR

29. Project # 3 Date of Notice to Proceed

8/17/2017

30. Project # 3 Contractual Completion Date

8/31/2018

31. Project # 3 Actual Completion Date

7/24/2019

32. Project # 3 Owner

South Texas College

33. Project # 3 Architect

PBK Architects

7 List your company's history of repeat business with any entity for project of similar size

Item Attributes

1. Owner

Performance Charter School Development

2. # of Repeat Projects

Two (2)

3. Project Name

Jubilee Academy Harlingen, TX and Jubilee Academy Brownsville, TX

4. Owner

Navy Army Credit Union

5. # of Repeat Projects

four (4)

6. Project Name

Navy Army Credit unions in Aransas Pass, Weslaco, Brownsville, McAllen TX

7. Owner

Crush Enterprises - Sonic Drive ins

8. # of Repeat Projects

three (3)

9. Project Name

New Sonic Drive-in restaurants in San Juan, Elsa, and Mercedes TX

8 Safety Inspections

Item Attributes

1. State the frequency safety inspections are conducted for projects.

Superintendents Conduct daily safety audits and Safety Manager visits jobs sites three (3) times a week

9 List of Claims, judgements, arbitration proceeding or suits pending or outstanding against your company or its officers, if any. Summarize the nature of the such claim below.

Item Attributes

1. List claims (Date, Owner, Summary of each claim)

NONE

10 Select the Correct Statement

Item Attributes

1. Select the correct Statement

- **General Contractor:** My company will utilize 100% of its own forces. Describe the sufficient resources your company has to manage staff and successfully perform the work.
- **Joint venture or other type of arrangement:** Describe type of arrangement. If using subcontractors, list the subcontractors by trade that will be assigned to this project.

General Contractor (General Contractor)

Joint venture or other type of arrangement (Joint venture or other type of arrangement)

2. Describe the sufficient resources your company has to manage staff and successfully perform the work. If this does not pertain to your answer, disregard.

We understand the significance of these facilities to McAllen ISD and especially to the three high schools' young performers. We are dedicating a solid team empowered to make timely decisions and successfully perform work from the project kickoff through final completion. The on-site team will have the full support of Noble's organization, headquartered in La Feria. One superintendent will be assigned per site, and a senior project manager will oversee all three high school locations. A Quality Control manager will assist the team by ensuring that all three sites are in compliance with the project plans and specs. The CMAR team concept is crucial for the accuracy of the GMP. Our team will provide cost estimates, schedule analysis and constructability reviews to ensure a successful delivery of the performing arts facilities. We have a proven track record delivering CMAR projects to Texas school districts and other public organizations.

3. Describe the type of arrangements. If using sub-contractors by trade that will be assigned to this project.

Noble will competitively advertise the projects and select qualified subcontractors. We have a vast relationship with local vendors and continuously evaluate their performance from past projects. This ensures subs are performing tasks on site as required. Noble typically self performs small trades such as door and hardware installation as well as specialty installation.

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List names of the individuals who will be assigned for the duration of the project.

Item Notes: (i.e., Estimator, Project Manager, Assistant Project Manager, Project Superintendent, Assistant Project Superintendent and MEP Quality Control Specialist).

Item Attributes

1. Staff #1 Name

Mauricio Gomez

2. Staff #1 Title

Project Executive

3. Staff #1 Job Description

Senior Project manager with extensive experience running multiple ongoing projects

4. Staff #1 Years with firm

6

5. Staff #1 Years in the industry

25

6. Staff #2 Name

Bert Lozano

7. Staff #2 Title

General Superintendent

8. Staff #2 Job Description

Oversee all construction related functions of the project while simultaneously ensuring that the work in place matches the plans and specs

9. Staff #2 Years with firm

6

10. Staff #2 Years in the industry

20

11. Staff #3 Name

Mathew Bennett

12. Staff #3 Title

Project Superintendent

13. Staff #3 Job Description

Oversee all construction related functions of the project while simultaneously ensuring that the work in place matches the plans and specs

14. Staff #3 Years with firm

6

15. Staff #3 Years in the industry

10

16. Staff #4 Name

Rolando Martinez

17. Staff #4 Title

Project Superintendent

18. Staff #4 Job Description

Oversee all construction related functions of the project while simultaneously ensuring that the work in place matches the plans and specs

19. Staff #4 Years with firm

3

20. Staff #4 Years in the industry

10

21. Describe your organization’s concepts for working in a team relationship with the Owner and Architect during the design and construction for major projects. What is your experience working with other Owner consultants (e.g., a program manager) thorough

Early planning sets the stage for a smooth construction process. We will collaborate with McAllen ISD to determine the most cost-effective approach while ensuring design intent. Noble’s construction team will provide constructability reviews, pricing options, and continuous schedule input. With full transparency, the owner and architect will be an active part of subcontractor pricing review.

Noble keeps lines of communication open throughout the CMAR process and communicates effectively to address any pressing issues. We will coordinate with McAllen ISD, the design team, A/E consultants, specialty trades and suppliers to ensure a stellar performance.

Our collaborative effort with the owner and architect includes BIM technology. As the CMAR team leader, we ensure design does not exceed the established budget for individual elements of work. On past Texas school projects, we have worked effectively with a program manager serving as the Owner’s representative.

Noble Texas Builders takes great pride in every project built. Quality and attention to details are essential to have a project completed on time and within the budget with NO issues through the process. This is why Noble assigns a Full-Time superintendent at each site to ensure a smooth construction process. Noble will have a Full-Time Senior Project Manager and Three (3) Superintendents, One Per site, to achieve a successful project.

1 2 List all projects that your company currently has in progress.

Item Attributes

1. Project #1 Project Name

Los Fresnos CISD Middle School Rancho Verde

2. Project #1 Contact Name

Daniel Cantu

3. Project #1 Phone Number

(956) 254-5000

4. Project #1 Architect or Engineering Firm

GMS Architects - David Monreal AIA 238

5. Project #1 Contract Amount

\$33564054

6. Project #1 Percent Completed

15%

7. Project #1 Schedule Completion Date

6/15/2023

8. Project #2 Project Name

CCRMA - Isla Blanca Admin Bldg

9. Project #2 Name Contact

Pete Sepulveda Sepulveda Jr.

10. Project #2 Phone Number

psepulveda@ccrma.org

11. Project #2 Architect or Engineering Firm

GMS Architects - David Monreal AIA

12. Project #2 Contract Amount

\$4489938

13. Project #2 Percent Completed

5%

14. Project #2 Schedule Completion Date

2/11/2023

15. Project #3 Project Name

Jubilee Leadership Academy - Brownsville, TX

16. Project #3 Name Contact

Jay Lemery

17. Project #3 Phone Number

jlemery@performancedcsd.com

18. Project #3 Architect or Engineering Firm

Mussman Architects - Mollie Greene

19. Project #3 Contract Amount

\$10223193

20. Project #3 Percent Completed

99%

21. Project #3 Schedule Completion Date

6/1/2022

22. Project #4 Project Name

McDonalds Restaurant Pharr, TX

23. Project #4 Owner Contact

Jose Ramirez

24. Project #4 Phone Number

(281) 352-5388

25. Project #4 Architect or Engineering Firm

Castle Design Group - Jaime Moreno (281) 795-0575

26. Project #4 Contract Amount

\$2655496

27. Project #4 Percent Completed

60%

28. Project #4 Schedule Completion Date

7/3/2022

29. State your company's total worth of work in progress and under contract.

\$37338329

1
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Project schedule/timeline.

Item Notes: Provide a schedule/timeline for this RFP.

Item Attributes

1. Describe your proposed project schedule/timeline.

Preconstruction will take 2 months to establish a required constructability to meet owner's budget and needs within an allotted timeframe.

- We will then work on submitting a GMP to McAllen ISD
- Shortly after, we will begin to solicit the advertisement to subcontractors.
- During the buyout, we will submit recommendations to owner and design team for best valued subcontractors.
- Subcontracts will be issued and applications to obtain a building permit
- Once the permit has been secured, actual construction will be 12 months or less

2. The District has a critical need for substantial completion within 420 days of commencement.

Specify the calendar days that you can substantially complete the project.

360

**1
4** Attach three (3) reference letters from major suppliers and/or sub-contractors dated within the past two (2) years which specifically address the following: (2020, 2021)

- History of paying sub-contractors
- Providing materials on time

Item Attributes

1. Confirm you have attached the 3 Supplier Reference Letters.

Yes

**1
5** Attach “Workers Compensation Experience Rating” for the last three (3) years (2019, 2020, 2021) and the corresponding letter from your insurance agent.

Item Attributes

1. Did you attach the Workers Compensation Experience Rating form?

Yes

**1
6** Attach “OSHA Form 300 Log of Work-Related Injuries and Illnesses” for the last three (3) years (2019, 2020, 2021) addressing the following:

- Number of injuries and illnesses
- Number of lost time accidents
- Number of recordable cases
- Number of fatalities
- Number of employee direct hire fixed hours worked (round to 1,000's)

Item Attributes

1. Did you attach the OSHA Form 300 Log of Work-Related Injuries and Illnesses

Yes

**1
7** Attach your company’s safety program manual and/or procedures for current and new employees

Item Attributes

1. Did you attach your company's safety program manual?

Yes

1
8

Drug/Alcohol Prevention Policies

Item Notes: Attach your company's drug/alcohol prevention policy and/or procedures

Item Attributes

1. Did you attach your company's drug/alcohol prevention policy and/or procedures?

Yes

1
9

Attach a letter from your surety company addressing the following points:

1) Surety Company

- Listed in the State Board of Insurance, Bond Department's "List of Insurance Companies Licensed to Write Fidelity and Surety Bonds in Texas.
- Is authorized to do business in Texas and is authorized to do business up to the limit of the contract.
- Holds a certificate of authority from the U.S. Secretary of Treasury or has obtained reinsurance for any liability in excess of \$100,000.
- AM Best Rating

2) Contractor

- Maximum bonding limit for the contractor.
- Aggregate/total available limit of coverage.
- Single limit coverage.
- Years doing business with surety.

Item Attributes

1. Did you attach a letter from your surety company?

Yes

20 Attach a Current (2020 or 2021) Financial Statement

For all business entities other than publicly held corporations, please attach a financial statement showing organization's latest:

- Balance and income statement (indicating current assets, net fixed assets, other assets, current liabilities and other liabilities)
- Financial statement (indicating date, name and address of firm preparing financial statement)

Item Notes:

Item Attributes

1. NOTE

If the financial statement is not for the identical organization submitting offer, state below the relationship and financial responsibility of the organization whose financial statement is provided (parent, subsidiary, etc.):

No response

2. Did you attach your financial statement?

Yes

21 Submit Bond in a form as indicated in section 6 of General Terms and Conditions

Item Attributes

1. Did you attach the copy of the Bid Bond?

Yes

2. Mail Original Bid Bond (Scope 9.8)

Original Bid Bond must be must be mailed to:

Gracie Garza
2000 N. 23rd St.
McAllen, TX 78501

Acknowledged (Acknowledged)

22 Officers of Company

Item Attributes

1. Within the last five (5) years, has an officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract?

No

2. If the answer is yes, please explain.

N/A

243

2 3	Categories of Work
Item Attributes	
1. List the categories of work that your organization normally performs with its forces. Would you propose to do any work with your own forces or bid all work to subcontractors?	
<div style="border: 1px solid black; padding: 5px;">Noble will Self-Perform all carpentry and general labor, and will subcontract all key trades that relate to the project.</div>	

2 4	Subcontractors
Item Attributes	
1. List any subcontractors in which your organization has some ownership and list the categories of work those subcontractors normally perform.	
<div style="border: 1px solid black; padding: 5px;">N/A</div>	

2 5	Problem or Challenge
Item Attributes	
1. Describe the most common problem or challenge that you have encountered in school construction and your method for addressing the issue.	
<div style="border: 1px solid black; padding: 5px;">The availability of materials has been the most common challenge, it is important that we start buying out key trades and issuing purchase orders once the Notice to Proceed has been issued by the owner to further prevent any delays and or shortages.</div>	

2 6	Experience
----------------------	------------

Item Attributes

1. What do you bring to the project team that is unique?

We're From Here

We are intimately familiar with the unique demands of building school facilities in South Texas. For us, the buck starts and stops right here in the Valley where our team has been working for over 30 years. This assures McAllen ISD that no matter what issues arise, the solution is already here in the Valley. Being from here means that even after the work is complete and all the bills are paid, we will still be here supporting the school district and standing behind our work. Hearing stories of students are performing in the new facilities will be music to our ears.

Our team's long history of successfully building in South Texas gives us unmatched insights into the resources available here at home. We know the local contractors and suppliers as well as local professionals and can bring their unique capabilities to benefit the McAllen High School, Memorial High School and James Nikki" Rowe High School New Mariachi and Black Box Buildings.

Our long relationships with capable local service providers means we can efficiently inform the building community about the project and generate interest in performing services for the school district. Maximizing local interest and participation helps raise quality and reliability while reducing the costs on the project.

The Noble Advantage

We treat your needs and facilities as if they were our own. Our high client retention rate is achieved by making sure clients are 100% satisfied – every time, on every project. We have been given opportunities to build multiple projects for our clients by ensuring comprehensive client service during the initial preconstruction phase all the way through the occupancy and warranty period.

Noble Building Solutions

Noble Building Solutions has an experienced on-call team ready for rapid response specialty projects, construction repairs and emergency construction needs 24/7, 365 days a year. Skilled craftsmen perform work in-house, which helps protect your project budget and schedule. Our goal is to support our clients' needs from the inception of the project through its lifecycle.

Proven Success for McAllen ISD

The only drama on this project will be in the Black Box! We bring a proven team of construction professionals who value our relationship with McAllen ISD and our other South Texas public school district clients.

2
7

Ability to Complete Projects

Item Attributes

1. Describe your firm's ability to complete projects on schedule, including the number of projects that have not been completed on schedule, and the reasons for such delay.

Since our first project in 2015, Noble has finished all projects earlier than the contractual end date by implementing LEAN Construction. LEAN techniques sharpen the way we build projects by ensuring that all subcontractors start and end their work at the pre-discussed date. Our quality control practices ensure that the work is done correctly and efficiently the first time by coordinating with the trades and hosting meetings to discuss the work before it ever starts.

Since the pandemic began, our team promptly adapted to CDC protocols which helped manage the number of sick call ins from our subcontractors to our own staff. In spite of worldwide supply chain issues and labor shortages, we were still able to meet project deadlines with our quick initiatives and programs in place.

2
8

Pre Construction Services

Item Attributes

1. Describe your organization's approach to providing preconstruction services and identify the person who will be primarily responsible for leading that effort.

Preconstruction is the key for a successful CMAR project. The Preconstruction phase assures products and materials meeting the required needs within the allotted budget are specified and no surprises arise after the GMP is established. Preconstruction is an opportunity to incorporate features needed by the end user by assigning current market values and assuring these are incorporated early in the design and therefore allotted on the GMP amount.

Juan Delgado and Steven Delgado will be the primary points of contact during the Preconstruction phase. Their vast experience in CMAR projects allows them to overcome obstacles and challenges in budgeting and programming, which are typical of this phase. The current market conditions have more than doubled these challenges, but with Juan and Steven's experience these challenges are accounted for early in the process.

Noble has proposed a team committed to providing McAllen ISD with unmatched CMAR services. Our proactive, collaborative approach will increase value through productivity and decreasing cost whenever possible. The Noble team will keep the three McAllen ISD projects within budget through the following:

- Accurate, honest, and timely communication
- Proactive effort by experienced construction professionals
- Deep commitment and adequate resources

Monthly project review meetings are held with our South Texas home office and analyzed by company officers. Cost control is monitored by receiving feedback from specialty subcontractors to ensure the proper information is being relayed to the design team. The project team will track the following items on a daily, weekly, and monthly basis until the completion of the project:

- Project cost
- Means and methods
- Value engineering options
- Project schedule
- Ongoing constructability review

2
9

Estimating and Cost Control Measures

Item Attributes

1. Describe your project estimating system for developing cost estimates based on Schematic Design and Design Development documents.

Noble believes in the practice of initiating involvement with our subcontractors in the early phases of the design cost estimating process. This enables us to quickly move pricing from the conceptual stages to the GMP stage. Our estimating department will use a wide array of systems such as On-Screen takeoff, Cost OS, OpenSpace, and Building connected to construct cost estimates using the readily available design and design development documents to forecast a firmer estimate.

2. Describe your project estimating system for developing the Guaranteed Maximum Price ("GMP") Proposal.

Once our estimating department has gathered the data from the schematic design and design development documents, then we will take the lead on the following to establish the GMP:

- Establish budget for each phase of work
- Prepare subcontractor bid packages
- Host pre-bid meetings for all packages
- Analyze bids for best value

The Noble team will collaborate with all stakeholders to be sure that the design will not exceed the budget.

3. How will your firm monitor and track buyout savings during the buyout process, and how will you communicate this information to the District?

During the buyout process, our Director of Estimating, Superintendents, and Senior Project Manager will review all of the subcontractors' bids to ensure that they are in compliance with the scope of work. Those in compliance will be reviewed for best value. If a subcontractor is able to give us a better value, we will notify McAllen ISD to advise of a potential cost savings and ask for approval to proceed with the better valued sub. Longer lead time trades will be procured first to avoid any delays and to ensure that their materials arrive accordingly to the project schedule. Buyout savings are monitored throughout the project and released to the owner early for their use.

4. How will contingencies be managed through the completion of the Project?

Noble plans and prepares ahead of time to circumvent any possible foreseeable situations. We advise the owner through the assumptions and clarifications submission, and if the owner approves, those funds will be separated in case they can be utilized.

Contingency funds may be used at the discretion of McAllen ISD. If any changes are needed to the scope and/or the architect makes revisions, those funds, if approved, will serve as a backup account for any unforeseen conditions or owner requested changes. Towards the end of the project, 100% of the contingency will be given back to McAllen ISD, along with any other cost saving measures under the GMP agreement.

30 A construction manager-at-risk shall publicly advertise for bids or proposals as per Texas Government code Sec. 2269.255

Item Attributes

1. Please acknowledge that you will advertise for bids or proposals as per Texas Government code Sec. 2269.255

Acknowledged (Acknowledged)

Response Total: \$11,500.00



EXHIBIT E

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/1/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER IBTX Risk Services 32335 US Hwy 281 N., Suite #102 Bulverde TX 78163	CONTACT NAME: Service Team PHONE (A/C, No, Ext): 214-989-7100 E-MAIL ADDRESS: service@ib-tx.com		FAX (A/C, No): 210-696-8414													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Amerisure Insurance Company</td> <td>19488</td> </tr> <tr> <td>INSURER B : Endurance American Insurance Company</td> <td>10641</td> </tr> <tr> <td>INSURER C : Nautilus Insurance Company</td> <td>17370</td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>			INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Amerisure Insurance Company	19488	INSURER B : Endurance American Insurance Company	10641	INSURER C : Nautilus Insurance Company	17370	INSURER D :		INSURER E :		INSURER F :
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INSURER E :																
INSURER F :																
INSURED Noble Texas Builders, LLC 108 S. Main Street La Feria TX 78559	NOBLTEX-01															

COVERAGES **CERTIFICATE NUMBER: 427513518** **REVISION NUMBER:**


THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab <input checked="" type="checkbox"/> XCU GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			2123220001	5/1/2023	5/1/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			21232190001	5/1/2023	5/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			21232220001	5/1/2023	5/1/2024	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N <input checked="" type="checkbox"/> N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			21232230001	5/1/2023	5/1/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B C	Excess Liability Professional/Pollution			EXC30036744400 CPP2032002-13	5/1/2023 5/1/2023	5/1/2024 5/1/2024	Each Occ/Agg 5,000,000 Prof Each Claim 2,000,000 Poll Each Occurrence 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The General Liab and auto liability policies include blanket additional insured endorsement [CG7324 03/23, CA7118 11/09] as required in a written contract with the Named Insured. The General Liability, Auto liability, Workers Compensation and Umbrella Liability include a blanket waiver of subrogation endorsement [CG2404 12/19, CA7118 11/09, WC420304] as required in a written contract with the Named Insured. Primary Non-Contributory per attached [CG7324 03/23]. Cancellation per [IL7066 07/14]. Umbrella is follow form of the General Liability and Auto policies subject to policy terms and conditions.
RE: Request for Proposals No. 2023-1008 – Construction Manager at Risk Services McAllen High School, McAllen Memorial High School and James "Nikki" Rowe High School New Mariachi and Black Box Buildings.

CERTIFICATE HOLDER

CANCELLATION

McAllen ISD 2000 N. 23rd St. McAllen, TX 78501-6126	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE  248
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TEXAS ADVANTAGE COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the

BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

The premium for this endorsement is \$ \$100.00

1. BROAD FORM INSURED

SECTION II - LIABILITY COVERAGE, A.1. Who Is An Insured is amended by the addition of the following:

- d.** Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or a majority interest, will qualify as a Named Insured. However,
 - (1)** Coverage under this provision is afforded only until the end of the policy period;
 - (2)** Coverage does not apply to “accidents” or “loss” that occurred before you acquired or formed the organization; and
 - (3)** Coverage does not apply to an organization that is an “insured” under any other policy or would be an “insured” but for its termination or the exhausting of its limit of insurance.
- e.** Any “employee” of yours using:
 - (1)** A covered “auto” you do not own, hire or borrow, or a covered “auto” not owned by the “employee” or a member of his or her household, while performing duties related to the conduct of your business or your personal affairs; or
 - (2)** An “auto” hired or rented under a contract or agreement in that “employee’s” name, with your permission, while performing duties related to the conduct of your business. However, your “employee” does not qualify as an insured under this paragraph **(2)** while using a covered “auto” rented from you or from any member of the “employee’s” household.
- f.** Your members, if you are a limited liability company, while using a covered “auto” you do not own, hire or borrow and while performing duties related to the conduct of your business or your personal affairs.
- g.** Any person or organization with whom you agree in a written contract, written agreement or permit, to provide insurance such as is afforded under this policy, but only with respect to your covered “autos”.

This provision does not apply:

- (1)** Unless the written contract or agreement is executed or the permit is issued prior to the “bodily injury” or “property damage”;
- (2)** To any person or organization included as an insured by an endorsement or in the Declarations; or
- (3)** To any lessor of “autos” unless:
 - (a)** The lease agreement requires you to provide direct primary insurance for the lessor;
 - (b)** The “auto” is leased without a driver; and

(c) The lease had not expired.

Leased "autos" covered under this provision will be considered covered "autos" you own and not covered "autos" you hire.

h. Any legally incorporated organization or subsidiary in which you own more than 50% of the voting stock on the effective date of this endorsement.

This provision does not apply to "bodily injury" or "property damage" for which an "insured" is also an insured under any other automobile policy or would be an insured under such a policy, but for its termination or the exhaustion of its limits of insurance, unless such policy was written to apply specifically in excess of this policy.

2. COVERAGE EXTENSIONS - SUPPLEMENTARY PAYMENTS

Under **Section II - LIABILITY COVERAGE, A.2.a. Supplementary Payments**, paragraphs (2) and (4) are deleted and replaced as follows:

- (2) Up to \$2,500 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

3. AMENDED FELLOW EMPLOYEE EXCLUSION

Under **SECTION II - LIABILITY COVERAGE, B. EXCLUSIONS**, paragraph 5. **Fellow Employee** is deleted and replaced by the following:

5. Fellow Employee

"Bodily injury" to:

- a. Any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business. However, this exclusion does not apply to your "employees" that are officers, managers, supervisors or above. Coverage is excess over any other collectible insurance.
- b. The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of paragraph a. above.

4. HIRED AUTO PHYSICAL DAMAGE COVERAGE AND LOSS OF USE EXPENSE

A. Under **SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE**, the following is added:

If any of your owned covered "autos" are covered for Physical Damage, we will provide Physical Damage coverage to "autos" that you or your "employees" hire or borrow, under your name or the "employee's" name, for the purpose of doing your work.

We will provide coverage equal to the broadest physical damage coverage applicable to any covered "auto" shown in the Declarations, Item Three, Schedule of Covered Autos You Own, or on any endorsements amending this schedule.

B. Under **SECTION III - PHYSICAL DAMAGE COVERAGE, A.4. Coverage Extensions**, paragraph b. **Loss Of Use Expenses** is deleted and replaced with the following:

b. Loss Of Use Expenses

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver, under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision, only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";

- (2) Specified Causes of Loss, only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or
- (3) Collision, only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$30 per day, to a maximum of \$2,000.

C. Under **SECTION IV – BUSINESS AUTO CONDITIONS, B. General Conditions, 5. Other Insurance**, paragraph **b.** is replaced by the following:

- b. For Hired Auto Physical Damage, the following are deemed to be covered "autos" you own:
 1. Any covered "auto" you lease, hire, rent or borrow; and
 2. Any covered "auto" hired or rented by your "employees" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto", nor is any "auto" you hire from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.

5. LOAN OR LEASE GAP COVERAGE

Under **SECTION III – PHYSICAL DAMAGE COVERAGE, A. COVERAGE**, the following is added:

If a covered "auto" is owned or leased and if we provide Physical Damage Coverage on it, we will pay, in the event of a covered total "loss", any unpaid amount due on the lease or loan for a covered "auto", less:

- (a) The amount paid under the Physical Damage Section of the policy; and
- (b) Any:
 - (1) Overdue lease or loan payments including penalties, interest or other charges resulting from overdue payments at the time of the "loss";
 - (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
 - (3) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease;
 - (4) Security deposits not refunded by a lessor; and
 - (5) Carry-over balances from previous loans or leases.

6. RENTAL REIMBURSEMENT

Under **SECTION III - PHYSICAL DAMAGE COVERAGE, A.4. Coverage Extensions**, paragraph **a. Transportation Expenses** is deleted and replaced by the following:

a. Transportation Expenses

- (1) We will pay up to \$75 per day to a maximum of \$2,000 for transportation expense incurred by you because of covered "loss". We will pay only for those covered "autos" for which you carry Collision Coverage or either Comprehensive Coverage or Specified Causes of Loss Coverage. We will pay for transportation expenses incurred during the period beginning 24 hours after the covered "loss" and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss". This coverage is in addition to the otherwise applicable coverage you have on a covered "auto". No deductibles apply to this coverage.

- (2) This coverage does not apply while there is a spare or reserve “auto” available to you for your operation.

7. AIRBAG COVERAGE

Under **SECTION III - PHYSICAL DAMAGE, B. EXCLUSIONS**, paragraph **3.** is deleted and replaced by the following:

- 3. We will not pay for “loss” caused by or resulting from any of the following unless caused by other “loss” that is covered by this insurance:
 - (1) Wear and tear, freezing, mechanical or electrical breakdown. However, this exclusion does not include the discharge of an airbag.
 - (2) Blowouts, punctures or other road damage to tires.

8. GLASS REPAIR – WAIVER OF DEDUCTIBLE

Section III – PHYSICAL DAMAGE COVERAGE, D. Deductible is amended to add the following:

No deductible applies to glass damage if the glass is repaired rather than replaced.

9. COLLISION COVERAGE – WAIVER OF DEDUCTIBLE

Under **Section III - PHYSICAL DAMAGE COVERAGE, D. Deductible** is amended to add the following:

When there is a loss to your covered “auto” insured for Collision Coverage, no deductible will apply if the loss was caused by a collision with another “auto” insured by us.

10. KNOWLEDGE OF ACCIDENT

Under **SECTION IV - BUSINESS AUTO CONDITIONS, A. Loss Conditions, 2. Duties In The Event Of Accident, Claim, Suit Or Loss**, paragraph **a.** is deleted and replaced by the following:

- a. You must see to it that we are notified as soon as practicable of an “accident”, claim, “suit” or “loss”. Knowledge of an “accident”, claim, “suit” or “loss” by your “employees” shall not, in itself, constitute knowledge to you unless one of your partners, executive officers, directors, managers, or members (if you are a limited liability company) has knowledge of the “accident”, claim, “suit” or “loss”. Notice should include:
 - (1) How, when and where the “accident” or “loss” occurred;
 - (2) The “insured’s” name and address; and
 - (3) To the extent possible, the names and addresses of any injured persons and witnesses.

11. TRANSFER OF RIGHTS (BLANKET WAIVER OF SUBROGATION)

Under **SECTION IV - BUSINESS AUTO CONDITIONS, A. Loss Conditions** paragraph **5. Transfer Of Rights Of Recovery Against Others To Us** is deleted and replaced by the following:

5. Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after “accident” or “loss” to impair them. However, if the “insured” has waived rights to recover through a written contract, or if your work was commenced under a letter of intent or work order, subject to a subsequent reduction in writing with customers whose customary contracts require a waiver, we waive any right of recovery we may have under this Coverage Form.

12. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

Under **SECTION IV - BUSINESS AUTO CONDITIONS , B. General Conditions** , paragraph **2. Concealment, Misrepresentation Or Fraud** is amended by the addition of the following:

We will not deny coverage under this Coverage Form if you unintentionally fail to disclose all hazards existing as of the inception date of this policy. You must report to us any knowledge of an error or omission in your representations as soon as practicable after its discovery. This provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

13. BLANKET COVERAGE FOR CERTAIN OPERATIONS IN CONNECTION WITH RAILROADS

When required by written contract or written agreement, the definition of "insured contract" is amended as follows:

- The exception contained in paragraph **H.3.** relating to construction or demolition operations on or within 50 feet of a railroad; and
- Paragraph **H.a.**

are deleted with respect to the use of a covered "auto" in operations for, or affecting, a railroad.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION, NONRENEWAL OR MATERIAL CHANGE – THIRD PARTY

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM
COMMERCIAL GENERAL LIABILITY COVERAGE FORM
COMMERCIAL UMBRELLA LIABILITY COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE FORM
TRUCKERS COVERAGE FORM

Subject to the cancellation provisions of the Coverage Form to which this endorsement is attached, we will not:

1. Cancel;
2. Nonrenew; or,
3. Materially change (reduce or restrict)

this Coverage Form, except for nonpayment of premium, until we provide at least 30 days written notice of such cancellation, nonrenewal or material change. Written notice will be to the person or organization named in the Schedule. Such notice will be by certified mail with return receipt requested.

This notification of cancellation, nonrenewal or material change to the person or organization named in the Schedule is intended as a courtesy only. Our failure to provide such notification will not:

1. Extend any Coverage Form cancellation date;
2. Negate the cancellation as to any insured or any certificate holder;
3. Provide any additional insurance that would not have been provided in the absence of this endorsement;
or
4. Impose liability of any kind upon us.

This endorsement does not entitle the person or organization named in the Schedule to any benefits, rights or protection under this Coverage Form.

SCHEDULE

Name Of Person Or Organization

Mailing Address

Any person or organization holding a certificate of insurance issued for you, provided the certificate:

The address shown for that person or organization in that certificate of insurance

1. Refers to this policy;
2. States that notice of:
 - a. Cancellation;
 - b. Nonrenewal; or
 - c. Material change reducing or restricting coverage;will be provided to that person or organization;
3. Is in effect at the time of the:
 - a. Cancellation;
 - b. Nonrenewal; or
 - c. Material change reducing or restricting coverage; and
4. Is on file at your agent or broker's office for this policy

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

- COMMERCIAL GENERAL LIABILITY COVERAGE PART
- ELECTRONIC DATA LIABILITY COVERAGE PART
- LIQUOR LIABILITY COVERAGE PART
- POLLUTION LIABILITY COVERAGE PART DESIGNATED SITES
- POLLUTION LIABILITY LIMITED COVERAGE PART DESIGNATED SITES
- PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
- RAILROAD PROTECTIVE LIABILITY COVERAGE PART
- UNDERGROUND STORAGE TANK POLICY DESIGNATED TANKS

SCHEDULE

Name Of Person(s) Or Organization(s):

ANY PERSON OR ORGANIZATION REQUIRED BY WRITTEN CONTRACT OR CERTIFICATE OF INSURANCE

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Conditions:**

We waive any right of recovery against the person(s) or organization(s) shown in the Schedule above because of payments we make under this Coverage Part. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person(s) or organization(s) prior to loss. This endorsement applies only to the person(s) or organization(s) shown in the Schedule above.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**CONTRACTOR’S BLANKET FLEX ADDITIONAL INSURED
ENDORSEMENT – FORM A**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Policy Number 21232200001	Agency Number 0755324	Policy Effective Date 05/01/2023
Policy Expiration Date 05/01/2024	Date 05/01/2023	
Named Insured NOBLE TEXAS BUILDERS, LLC	Agency IBTX - BULVERDE	Issuing Company AMERISURE INSURANCE COMPANY

A. SECTION II - WHO IS AN INSURED is amended to add as an additional insured:

1. Any person or organization with whom you have agreed in a “written agreement” that such person or organization be added as an additional insured on this policy, and any other person or organization you are required to add as an additional insured under such “written agreement”.
2. If “your work” began under a written letter of intent or written work order, any person or organization who issued the written letter of intent or written work order, but:
 - a. such coverage will apply only for 30 calendar days following the date the written letter of intent or written work order was issued; and
 - b. the person or organization is an additional insured only for, and to the extent of, liability arising out of “bodily injury”, “property damage”, or “personal and advertising injury” caused, in whole or in part, by your negligent acts or omissions, or the negligent acts or omissions of others working on your behalf, in the performance of your work as specified in the written letter of intent or written work order. This coverage does not apply to liability arising out of the independent acts or omissions of the additional insured.

For the purposes of the coverage provided by this endorsement, a “written agreement” means a written contract or written agreement that:

1. requires you to include a person or organization as an additional insured for a period of time during the policy period; and
2. is executed prior to the occurrence of “bodily injury”, “property damage”, or “personal and advertising injury” that forms the basis for a claim under this policy.

The insurance provided by this endorsement does not apply to any person or organization that is specifically listed as an additional insured on another endorsement attached to this policy.

B. The coverage provided to any person or organization added as an additional insured pursuant to Paragraph **A.1** is limited as follows:

1. If the “written agreement” specifically and exclusively requires you to name the person or organization as an additional insured using the ISO CG 20 10 endorsement with edition dates of 11 85 or 10 01, or the ISO CG 20 37 10 01 endorsement, that person or organization is an additional insured, but only with respect to liability for “bodily injury”, “property damage”, or “personal and advertising injury” arising out of “your work” for that insured by or for you.
2. If the “written agreement” requires you to name the person or organization as an additional insured using the ISO CG 20 10 and or CG 20 37 endorsements without specifically and exclusively requiring the 11 85 or 10 01 edition dates, that person or organization is an additional insured, but only with respect to liability for “bodily injury”, “property damage”, or “personal and advertising injury” caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf.
3. If the “written agreement” requires you to name the person or organization as an additional insured for operations arising out of your work and does not specify an ISO additional insured endorsement, that person or organization is an additional insured, but only with respect to liability for “bodily injury”, “property damage”, or “personal and advertising injury” arising out of your acts or omissions, or the acts or omissions of others working on your behalf, in the performance of your work as specified in the “written agreement”. This coverage does not apply to liability arising out of the sole negligence of the additional insured unless specifically required in the “written agreement”.
4. If none of the above paragraphs apply, then the person or organization is an additional insured only for, and to the extent of, liability arising out of “bodily injury”, “property damage”, or “personal and advertising injury” caused, in whole or in part, by your negligent acts or omissions, or the negligent acts or omissions of others working on your behalf, in the performance of your work as specified in the “written agreement”. This coverage does not apply to liability arising out of the independent acts or omissions of the additional insured.

However, the insurance afforded to such additional insured only applies to the extent permitted by law.

C. The insurance provided to an additional insured under this endorsement does not apply to:

1. “Bodily injury” or “property damage” included in the “products-completed operations hazard” unless the “written agreement” specifically requires such coverage (including by specifically requiring the CG 20 10 11 85). To the extent the “written agreement” requires such coverage for a specified amount of time, the coverage provided by this endorsement is limited to the amount of time required for such coverage by the “written agreement”.
2. “Bodily injury”, “property damage”, or “personal and advertising injury” arising out of an architect’s, engineer’s, or surveyor’s rendering of, or failure to render, any professional services, including but not limited to:
 - a. The preparing, approving, or failing to prepare or approve:
 - (1) Maps;
 - (2) Drawings;
 - (3) Opinions;
 - (4) Reports;
 - (5) Surveys;
 - (6) Change orders;

(7) Design specifications; and

b. Supervisory, inspection, or engineering services.

D. The limits of insurance that apply to the additional insured are the least of those specified in the “written agreement” or declarations of this policy.

Coverage provided by this endorsement for any additional insured shall not increase the applicable Limits of Insurance shown in the Declarations. The limits of insurance that apply to the additional insured are inclusive of, and not in addition to, the Limits of Insurance shown in the Declarations.

E. With respect to the coverage provided by this endorsement, **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 4. **Other Insurance** is deleted and replaced with the following:

4. Other Insurance.

a. Coverage provided by this endorsement is excess over any other valid and collectible insurance available to the additional insured whether:

- (1) Primary;
- (2) Excess;
- (3) Contingent; or
- (4) On any other basis.

In addition, this insurance is excess over any self-insured retentions, deductibles, or captive retentions payable by the additional insured or payable by any person or organization whose coverage is available to the additional insured.

However, if the “written agreement” requires primary and non-contributory coverage, this insurance will be primary and non-contributory relative only to the other insurance available to the additional insured which covers that person or organization as a Named Insured, and we will not share with that other insurance. For any other insurance available to the additional insured where that person or organization is not a Named Insured, this policy will share coverage with that other insurance based on the terms specified in Paragraph b. Method of Sharing below.

b. Method of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this method, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

TEXAS WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because Texas is shown in Item 3.A. of the Information Page.

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule where you are required by a written contract to obtain this waiver from us.

This endorsement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

The premium for this endorsement is shown in the Schedule.

Schedule

1. () Specific Waiver
Name of person or organization

(X) Blanket Waiver
Any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

2. Operations:

3. Premium:
The premium charge for this endorsement shall be 0.020 percent of the premium developed on payroll in connection with work performed for the above person(s) or organization(s) arising out of the operations described.

4. Advance Premium: Included

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 05/01/2023 Policy No. 21232230001 Endorsement No.
Insured Noble Texas Builders, LLC Premium \$

Insurance Company WC 42 03 04 B Countersigned by
(Ed. 6-14) 259

Construction Manager-at-Risk Expectations

Pre-Design

Complete constructability and overall site plan review.
Establish project goals and priorities with Owner and Architect.
Establish and/or confirm overall budgets with Owner and Architect.
Establish procedures for decision making, review, etc.
Develop an Overall Management Plan and CPM Scheduling Plan of critical design and construction dates in order to accomplish the stated objectives.
Develop, implement, and monitor cost model for continuous budget control.
Prepare design change order control system for elected modifications.
Complete phase cost estimate.

Schematic Design

Prepare conceptual estimate from design sketches.
Hold technical review sessions with Owner and Architect.
Consult with the Owner and Architect on means and methods of construction.
Review schematic design documents and report on the following items:
a) Analyze the potential for use of systems components.
b) Submit to Owner and Architect any special input relative to time and cost control of the plan.
c) Prepare "cost evaluation" studies relative to value engineering.
Generate a critical data schedule.
Prepare a professional construction CPM network for the issuance of proposal packages.
Complete phase cost estimate.

Design Development

Review the design development documents with the Owner and Architect.
Revise and update the critical data schedule sheet.
Develop and arrange pre-proposal packages.
Prepare a site use study to be used for allocation of space for construction storage, lay-down areas, parking and temporary facilities.
Prepare a cash flow analysis for both the design and construction phases.
Complete constructability review.
Prepare a detailed estimate based on available design drawings in a CSI or subcontractor bid format.

Construction Documents

Complete phase cost estimate in the CSI format at 50% and 95%.
Complete constructability review at 50% and 95%.
Review the drawings and project manual relative to the bid packages and notify Owner and Architect of inconsistencies.
Develop procurement package requirements, phasing, work restrictions.
Determine procurement date and time.
Publish advertisement for proposals.
Schedule and conduct pre-procurement conferences.
Update project budget and schedule consistent with final construction documents.

Proposals and Negotiations

Distribute documents to plan rooms, subcontractors and suppliers.
Solicit proposals from subcontractor and suppliers on advertised day.
Negotiate with subcontractors as necessary to meet the current budget.
Compile list of subcontractors and suppliers to form Guaranteed Maximum Price proposal.
Present the GMP proposal and proposed GMP Amendment to the School Board for action.
Scope and execute contracts with selected subcontractors and suppliers.

EXHIBIT
F

GENERAL CONDITIONS

The General Conditions which are to be included in the Contract are set forth below. All personnel assigned specifically to the Project are included in the General Conditions, whether stated in the line items below or not.

Construction Management Staff directly working on the project and their associated costs:

- Senior Project Manager
- Project Manager(s)
- Assistant Project Manager(s)
- Superintendent(s)
- Assistant Superintendent(s)
- Project Engineer/Expeditor(s)
- Project Support Staff
- Field/Office Engineer(s)
- Field/Office Support Staff
- CPM Scheduler
- Safety
- Coordinator/Assistant(s)
- Administrative Personnel
- Building Information Modeling related staff of the Constructor used for conversion of A/E documents.

Construction Management Staff Equipment:

- Vehicle Allowances, Mileage and Insurance
- Cell Phones and Other Communication Equipment
- Computers and Software

Temporary Office:

- Office Trailer Rental & Relocation
- Office Supplies
- Project Specific Signage
- Temporary Power
- Telephone & Internet Service
- Temporary Sewer
- Temporary Water
- Temporary Toilets
- Equipment / Storage Trailers
- General Handling & Hoisting, Fuel & Maintenance
- Fire Extinguishers
- Safety Equipment & Supplies
- Barricades, Protection, Safety Railing, Equipment
- Safety Inspections
- Field Engineering Labor, Equipment & Supplies
- Small Tools & Consumables
- Temporary Fencing
- Equipment Rentals / Scaffolding
- Postage / Courier Service

EXHIBIT

G

ADDENDUM #1

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

May 31, 2022

RE: CSP 2023-1008 Construction Manager at Risk Services McAllen High School, Memorial High School and James "Nikki" Rowe High School New Mariachi and Black Box Buildings

Please note the following changes for the referenced project.

- Pre-Proposal Conference 6/1/2022-8:30-AM CT **11:30 AM CT**
- Reading of Proposals 6/8/2022 11:00-AM CT **11:30 AM CT**

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

EXHIBIT
H

ADDENDUM #2

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

June 3, 2022

RE: RFP 2023-1008 Construction Manager at Risk Services McAllen High School, McAllen Memorial High School and James "Nikki" Rowe High School New Mariachi and Black Box Buildings

Please note the following changes for the referenced project.

- Correction on project title:
Construction Manager at Risk Services McAllen High School, **McAllen** Memorial High School and James "Nikki" Rowe High School New Mariachi and Black Box Buildings
- Pre-Proposal Conference sign in sheet has been attached to Attachment tab.
- Attachment A has been updated to read "Attachment A Evaluation Matrix"
- Attachment B has been updated to read "Attachment B Construction Manager-at-Risk Expectations"
- Attachment C has been updated to read "Attachment C General Conditions"

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

ADDENDUM #3

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

June 7, 2022

RE: RFP 2023-1008 Construction Manager at Risk Services McAllen High School, McAllen Memorial High School and James "Nikki" Rowe High School New Mariachi and Black Box Buildings

Please note the following changes for the referenced project.

- Line items:
 - Line 2: CM's fee Item Note See Attachment B ~~and Attachment C~~
 - Line 3: ~~Change Order Fee~~-General Conditions Fee
 - Line 4: has been deleted

- Scope of Work (Attachments Tab)
 - Section 9.8 has been deleted (See revised SOW in attachments tab)
 - Section 11.1.3 has been revised (See revised SOW in attachments tab)

**2023-1008 Request for Proposals (RFP)
Construction Manager-At-Risk Services (CMAR)
McAllen High School, McAllen Memorial High School,
and James “Nikki” Rowe High School
New Mariachi and Black Box Buildings
(One Step Process)**



**2023-1008 Request for Proposals (RFP) Construction Manager at Risk (CMAR) McAllen High School, McAllen Memorial High School, and James “Nikki” Rowe High School
New Mariachi and Black Box Buildings
Specifications and Scope of Work**

1. BACKGROUND

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

Officers of the District are:

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

2. INTENT

Pursuant to the provisions of the Texas Government Code, Chapter 2269, Subchapter F, it is the intent of the District, via this Construction Manager-at-Risk (“CMAR”), through a Request for Proposals (“RFP”), using a One-Step Method, to select a Construction Manager (“CM”) for the construction of Mariachi buildings and black box buildings for the three traditional high schools: McAllen High School, McAllen Memorial High School, and James “Nikki” Rowe High School.

3. ANTICIPATED SCHEDULE

- First Advertisement: May 25, 2022
- Released: May 26, 2022
- Second Advertisement: June 1, 2022
- Pre-proposal Conference: June 1, 2022 at 8:30 a.m.
Administration Building Dr. Ricardo Chapa Board Room
2000 N. 23rd St., McAllen TX 78501
- Questions Deadline: June 3, 2022 by 10:00. a.m.
- Response Deadline: June 8, 2022 at 10:00 a.m.
- Anticipated Board Meeting: June 13, 2022
- Anticipated Contract Execution: June 23, 2022
- Anticipated Notice to Proceed: July 1, 2022
- Anticipated Substantial Completion: September 24, 2023

4. REQUIREMENTS

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

5. RE-SOLICIT

The District has the right to reject all responses or re-solicit if only one solicitation is received by the deadline or extend the deadline.

**2023-1008 Request for Proposals (RFP) Construction Manager at Risk (CMAR) McAllen High School, McAllen Memorial High School, and James “Nikki” Rowe High School
New Mariachi and Black Box Buildings
Specifications and Scope of Work**

6. EVALUATION COMMITTEE.

The evaluation committee which will be comprised of Ruben Trevino, Executive Director of Facilities, Maintenance, and Operations; Melissa Ortiz, Project Manager; Alejandra Gonzalez, Director of Purchasing Services; Elizabeth Cabrera, Coordinator for Purchasing Services; and Gracie Garza, Senior Buyer will evaluate the RFP and recommend the successful vendor(s).

7. EVALUATION CRITERIA AND RELATIVE WEIGHTS

In determining the Awarded Contractor, the evaluation committee, will evaluate the responses using the following criteria, in accordance with Texas Government Code 2269.055 (a) (1-8)

- 7.1. the price;
- 7.2. the offeror's experience and reputation;
- 7.3. the quality of the offeror's goods or services;
- 7.4. the impact on the ability of the governmental entity to comply with rules relating to historically underutilized businesses;
- 7.5. the offeror's safety record;
- 7.6. the offeror's proposed personnel;
- 7.7. whether the offeror's financial capability is appropriate to the size and scope of the project; and
- 7.8. any other relevant factor specifically listed in the request for bids, proposals, or qualifications

Refer to Attachment “A” for weights.

8. COMMUNICATION WITH DISTRICT PERSONNEL

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

CM shall only communicate with members of the Purchasing Services team regarding all matters related to this RFP throughout the duration of the RFP. A CM shall not contact any other person related to the District, directly or indirectly.

9. SCOPE OF WORK

Construction of a Mariachi and Blackbox Buildings and associated site work for the three traditional high schools: McAllen High School, McAllen Memorial High School, and James “Nikki” Rowe High School

- 9.1. Mariachi buildings will each be approximately 5,000 sf in size
- 9.2. Blackbox buildings will each be approximately 7,000 sf. in size
- 9.3. Estimate Construction Budget: \$10,000,000.00
- 9.4. Project Team:
 - 9.4.1. Owner-McAllen ISD
 - 9.4.2. Engineer-Chanin Engineering (Architect – through Engineering firm)
- 9.5. CM shall be experienced in CMAR projects (see Line Item #6)
- 9.6. Expectations of the Construction Manager, (see Attachment B in the Attachments tab).
- 9.7. General Conditions (See Attachment C the Attachments tab)
- ~~9.8. CM shall submit a Bid Bond not less than five percent (5%) of the Proposal amount to include all fees as noted on the line items.~~
- 9.9. The awarded CM shall deliver Performance and Payments Bonds as required by Texas Government Code Chapter 2269.258, upon submission of an approved Guarantee Maximum Price (“GMP”) by the selected CMR.

**2023-1008 Request for Proposals (RFP) Construction Manager at Risk (CMAR) McAllen High School, McAllen Memorial High School, and James “Nikki” Rowe High School
New Mariachi and Black Box Buildings
Specifications and Scope of Work**

- 9.10. All actual cost information shall be made available to the District or it's agent during the duration of the project.
 - 9.11. A formal audit of the project may be conducted by an independent third party hired by the District at selected intervals during the construction phase and prior to final payment.
 - 9.12. The awarded CM shall deliver Performance and Payments Bonds as required by Texas Government Code Chapter 2269.258, upon submission of an approved Guarantee Maximum Price (“GMP”) by the selected CMR.
 - 9.13. CM shall provide any and all cost savings to the District.
10. In accordance with Government Code 2269.255, awarded CM shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors.
11. **SUBMISSION OF PROPOSAL RESPONSES.**
All proposals submitted for consideration, shall follow these steps as described herein.
- 11.1. The CM shall respond to all line items in the “Line Items” tab.
 - 11.1.1. Proposed cost for pre-construction services (Line Item 1);
 - 11.1.2. Proposed fee for CM (Line Item 2); and
 - 11.1.3. Proposed fee for ~~change-orders~~ General Conditions (Line Item 3)
12. **CONSTRUCTION MANAGER-AT-RISK SELECTION.**
District will review the RFP responses, conduct interviews if deemed appropriate, and make recommendations to the Board of Trustees.
13. **AGREEMENT**
Upon award, the CM shall sign AIA Document A133-2009, Agreement between Owner and Construction Manager as Constructor, as modified by District (see Attachments tab). Additionally, the General Conditions of the Contract for Construction will be AIA Document A201-2017 as modified by the District (see Attachments tab).
14. **AWARD INFORMATION**
- 14.1. The District will receive, publicly open, and read aloud the names of the CMs submitting a Request for Proposal.
 - 14.2. Within forty-five (45) days following the date of opening the District will evaluate and rank each submission in relation to the criteria set forth in this RFP. Following the committee's ranking of the CM based on the published selection criteria, the District will recommend the highest ranked CM to the Board of Trustees. Once awarded, the District will begin negotiations with the awarded CM. If the District is unable to negotiate an agreement with the selected CM, the District shall, formally and in writing, end negotiations with that CM and begin the negotiation process with the next ranked CM in the order of selection ranking, until a contract is reached or negotiations with all ranked CM end.
 - 14.3. Award information will be available for download from our website within ninety (90) days of opening: <https://mcallenisdtx.sites.thrillshare.com/page/awarded-vendors>.
15. **INSTRUCTIONS FOR SUBMITTING A PROPOSAL**
The District prefers and encourages CM to submit their response through Ionwave (<https://mcallenisd.ionwave.net>), however, we will accept submittals in a sealed envelope via mail or hand delivered. Email Gracie Garza, Senior Buyer at ggarza@mcallensd.net for address and mailing instructions.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Blake Henshaw, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 23:12:55 ET on 05/04/2023 under Order No. 3104238383 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, other than those additions and deletions shown in the associated Additions and Deletions Report.

P Blake Henshaw

(Signed)

Attorney: Walsh Gallegos Trevino Kyle & Robinson P.C.

(Title)

May 4, 2023

(Dated)

 **AIA® Document A201® – 2017****General Conditions of the Contract for Construction****for the following PROJECT:**

(Name and location or address)

RFP No. 2023-1008 Construction Manager-at-Risk Services (CMAR) McAllen High School, McAllen Memorial High School, and James "Nikki" Rowe High School New Mariachi and Black Box Buildings (Owner Contract 2023-202) at the following campus locations:

McAllen High School
2021 La Vista Ave.
McAllen, TX 78501

McAllen Memorial High School
101 E Hackberry Ave.
McAllen, TX 78501

James "Nikki" Rowe High School
2101 N Ware Rd.
McAllen, TX 78501

THE OWNER:

(Name, legal status and address)

McAllen Independent School District, a public school district and political subdivision of the State of Texas
2000 North 23rd Street
McAllen, TX 78501
Phone: (956) 618-6000
Fax: (956) 986- 8362

THE ARCHITECT:

(Name, legal status and address)

Chanin Engineering, LLC, a limited liability company of the State of Texas
400 Nolana Suite H2
McAllen, TX 78504
Phone: (956) 687-9421
Fax: (956) 687-3211

THE CONTRACTOR/CONSTRUCTION MANAGER

Noble Texas Builders, LLC, a limited liability company of the State of Texas
108 S. Main Street
La Feria, TX 78559
Phone: (956) 277-0708
Email: juan.delgado@nobletx.net

ADDITIONS AND DELETIONS:

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

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

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

TABLE OF ARTICLES

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2	OWNER
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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, Project Manual and the Bid or Proposal Documents prepared and submitted by the Owner and the Contractor's Bid or Proposal submitted by the Contractor, to the extent they do not conflict with the terms of this Agreement, and other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements. The Contract Documents identified in this Section shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations. In the absence of individual signatures by Owner and Contractor, the Contract Documents identified in the signed contract prevail. The term Contractor as used herein shall mean, and be interchangeable with the term Construction Manager at Risk.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. After execution of the Original Contract Documents, the Contract may thereafter be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.1.9 The terms "bids" or "bidding" shall include any kind of competitive purchasing under the Texas Education Code Chapter 44 and Texas Government Code Chapter 2269.

§ 1.1.10 **Miscellaneous Other Words**

§ 1.1.10.1 **Business Day**

The term "business day" is a day the Owner's Administration Building is scheduled to be open for normal business purposes, unless closed by the Owner's Superintendent of Schools for inclement weather or other reason. Days on which the Administration Building is normally closed are Thanksgiving Break, Winter Break, Spring Break, and Summer Break, as well as other federal, state or local days specified in the calendar approved by the Owner's Board of Trustees on an annual basis. A business day does not include a day on which the Owner's Administration Building is open only for the purposes of conducting candidate filing, early voting, elections, or special events.

§ 1.1.10.2 **Calendar Day**

A calendar day is a day on the Gregorian calendar. The Contact Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days.

§ 1.1.10.3 **Holidays**

Owner approved holidays for Contractor's Work are limited to New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

§ 1.1.10.4 **Work Day**

Work days include all calendar days except Holidays, Saturdays and Sundays.

§ 1.2 **Correlation and Intent of the Contract Documents**

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.1.2 During the course of the Work, should any conflict be found in or between the Contract Documents, the Contractor shall be deemed to have included in the cost of the Work the greater quantity or better quality, or the most stringent requirements, unless Contractor shall have obtained, before the submission of Contractor's Proposal, an interpretation in writing from the Architect as to what shall govern. The Architect, in case of such conflict, may interpret or construe the document so as to obtain the most substantial and complete performance of the Work consistent with the Contract Documents and reasonably inferable therefrom, in the best interests of Owner, and the Architect's interpretation shall be final. The terms and conditions of this clause shall not relieve any party of any other obligation under the Contract Documents.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 **Precedence Of The Contract Documents**

The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows with the highest authority listed as "1".

- .1 Contract Modifications signed by Contractor and Owner.
- .2 Addenda, with those of later date having precedence over those of earlier date.
- .3 General Conditions - AIA Document A201-2017, as modified by the Owner for the Project.

- .4 Specifications and Drawings.
- .5 Agreement – AIA Document A101-2017 or A133-2019, as modified by the Owner for the Project.
- .6 Bid/Proposal Documents including the Project Manual, Contractor’s Bid or Proposal Documents (to the extent such Bid or Proposal submitted by the Contractor is part of the Contract Documents and is not inconsistent with other portions of the Contract Documents)

§ 1.2.5 Relation Of Specifications And Drawings

Specifications and Drawings are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of Work indicated. In the event of the above-mentioned disagreements, the resolution shall be determined by the Architect.

§ 1.2.5.1 Drawings and Specifications are to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of Work indicated. In the event of the above-mentioned disagreements, the resolution shall be determined by the Architect.

§ 1.2.5.2 Where, in the Drawings and Specifications, certain products, manufacturer’s trade names, or catalog numbers are given, it is done for the express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Architect.

§ 1.2.5.3 When the Work is governed by reference to standards, building codes, manufacturer’s instructions, or other documents, unless otherwise specified, the current edition as of the Agreement date shall apply.

§ 1.2.5.4 Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are: (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect’s or Architect’s consultants’ reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect’s consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given in person, by

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mail, by courier, or by electronic transmission if a method for electronic transmission (e-mail or facsimile) or other commercially reasonable means and will under any of these circumstances, be effective when actually received. Any address for notice may be changed by written notice delivered as provided in this Section 1.6.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit or such other form agreed to by the parties, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance [Paragraph Deleted.]

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the Board of Trustees of the McCallen Independent School District and is referred to throughout the Contract Documents as if singular in number. The Owner may designate in writing one or more persons to represent the Owner; however, such representatives shall have the authority to bind the Owner only to the extent expressly authorized by the Owner and shall have no implied authority. Except as otherwise provided in Section 4.2.1, the Architect does not have the authority to bind the Owner. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner may engage a third-party consultant to represent the Owner. The Owner will notify the Contractor of the identity of such consultant.

§ 2.1.3 The Contractor acknowledges that no lien rights exist with respect to public property.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Pursuant to the requirements of Texas Business and Commerce Code section 56.054(e)(3), the Owner represents that funds are available and have been authorized for the full contract amount of the Work.

§ 2.2.2 [Paragraph Deleted.]

§ 2.2.3 [Paragraph Deleted.]

§ 2.2.4 [Paragraph Deleted.]

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner may furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site, but shall have no duty to do so. Notwithstanding the foregoing, if the Owner provides such survey, the Contractor shall remain responsible to independently investigate the physical characteristics, legal limitations, and utility locations for the Project site. In the event that the Contractor

damages any utilities during construction, the Contractor shall immediately repair the same at its sole cost and expense.

§ 2.3.5 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner within a reasonable time following actual receipt of a written request.

§ 2.3.6 The Contractor, Owner and Architect shall agree on an appropriate quantity of drawings and specifications to be printed and distributed for bidding purposes. The drawings shall be provided by the Architect and paid for by the Owner.

§ 2.3.7 Owner's personnel or consultant may, but are not required to be present at the construction site during progress of the Work to assist the Architect in the performance of his duties, and to verify the Contractor's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, and the equipment used in the performance of the Work for purpose of verification of Contractor's Applications for Payment.

§ 2.3.8 The Owner (either directly or by contract with the Architect) may furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 2.3.9 The Owner, (directly or by contract with the Architect), when such services are required, in the professional opinion of the Architect, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is defective or not in accordance with the requirements of the Contract Documents as required by Section 12.2, fails to timely carry out Work in accordance with the Contract Documents or is in default of any of its material obligations hereunder, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.. This right shall be in addition to, and not in restriction of, the Owner's right under Section 12.2.

§ 2.5 Owner's Right to Carry Out the Work

§ 2.5.1 If the Contractor is in default in any of its material obligations hereunder, neglects to timely carry out the Work in accordance with the Contract Documents, or fails to correct nonconforming or defective Work as required by Section 12.2, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or such non-conforming or defective Work with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or such non-conforming or defective Work at the sole cost of the Contractor. The Architect may, pursuant to Section 9.5.1, withhold or nullify the Contractor's Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such default or such non-conforming or defective Work, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure to correct such non-conforming or defective Work. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.5.2 Nothing contained in this Section 2.5 is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be authorized to do business in the state of Texas and lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this

Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative, or in the case of a Construction Manager-at-Risk, the Construction Manager-at-Risk, or its authorized representative.

§ 3.1.2 The Contractor shall perform the Work in a good and workmanlike manner and accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or Owner's consultants, if applicable, conducted in accordance with the Contract Documents or activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation: (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, and (5) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site, or for price escalations in the marketplace. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Contractor shall not perform any Work it knows involves an error, inconsistency, or omission without further instructions to Contractor or revised Construction Documents from the Architect. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the Work installed by other contractors, is not guaranteed by the Architect or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other Work, it shall verify at the site all dimensions relating to such existing or other Work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the Work or honor its warranty, or will result in a limitation of or interference with the Owner's intended use, then the Contractor shall promptly notify the Architect and Owner, in writing providing substantiation for its position.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15; however, nothing in this section shall provide the Contractor with an affirmative claim for damages for delay by Owner or Architect, as such a claim is prohibited under this Contract. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the

Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 Notwithstanding the delivery of a survey or other documents by the Owner, Contractor shall use reasonable efforts to perform all Work in such a manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the property. Contractor shall be responsible for, and shall repair at Contractor's own expense, any damage done to lines, cables, pipes, and pipelines identified to Contractor.

§ 3.2.6 The Owner and Contractor agree that the Contract Documents may not be free from errors, inconsistencies, or omissions, and further agree that the Owner makes no warranty as to the completeness or accuracy of the Contract Documents, either express or implied. Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly reviewed and become familiar with the Contract Documents and that the Contractor is not aware of any errors, inconsistencies or omissions in the Contract Documents which would delay the Contractor in the performance of the Contract Work. The Contractor shall not be entitled to any damages or increase in the Contract Amount due to delays or disruptions to the Work. This limitation on damages is further subject to the limitations set forth in Section 15.1.7.

§ 3.2.7 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's request for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation.

§ 3.2.8 The Contractor shall use the AIA Document G716-2004 "REQUEST FOR INFORMATION" (RFI) form unless otherwise provided in the Contract Documents. The Contractor shall keep a log of all RFI's submitted and number the RFI's consecutively beginning with the number 1.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall assign a Superintendent who shall make decisions on behalf of the Contractor and its subcontractors. The Superintendent shall be on the Project, in this capacity, at all times while Work on the Project is in progress. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, chapter C, Sections 756.021, *et seq.*, and shall require any applicable subcontractor to comply all such procedures. Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used.

§ 3.3.5 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent Contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the

Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

§ 3.3.6 The Contractor shall review contractor safety programs, procedures, and precautions in connection with performance of the Work. However, the Contractor's duties shall not relieve any Subcontractor(s) or any other person or entity (e.g. a supplier) including any person or entity with whom the Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations, and ordinances which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this Section are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

§ 3.3.7 Contractor acknowledges that the Work may be performed in connection with an educational facility which is currently occupied and in use. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb, or disrupt Owner's normal operations or facilities. Contractor agrees to and shall comply with all rules, regulations and requirements of the Owner and the school campus on which the Work is to be performed, and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of Owner. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. Contractor understands and accepts the difficulties and costs associated with working in an existing facility and the potential delays and disruptions in its Work and has included such items in the Contract Time and the Contract Sum. The Contractor shall perform all the Work in such a manner as to cause minimum interference with the operations of the Owner and other contractors and Subcontractors on the site, and shall take, and cause the Contractor's and its Subcontractor's employees, agents, licensees and permittees to take all necessary precautions to protect the Work and the site and all persons and property thereon from damage or injury.

§ 3.3.8 Representatives of the Owner, Contractor, and Architect shall meet periodically at mutually agreed upon intervals, for the purpose of establishing procedures to facilitate cooperation, communication, and timely responses among the participants. By participating in this arrangement, the parties do not intend to create additional contractual obligations or modify the legal relationships which may otherwise exist.

§ 3.3.9 The Contractor shall pay fees for public or private water, gas, electrical and other utility service at the site until Substantial Completion of the Work. In the event that the Work will be conducted at an Owner site, where utility services are existing on site and reasonably accessible to the Contractor, the Owner may elect, in writing, to provide and pay for utility service for the Project site. Agreement to pay for such utility service shall not absolve the Contractor from using utilities judiciously in connection with its performance of the Work. In all cases, the Contractor shall secure and arrange for all necessary utility connections.

§ 3.3.10 The Owner may require that the Contractor use and/or respond to certain Owner-furnished forms or inquiries during the course of the Project. From time to time, there may be future revisions, changes, additions or deletions to these forms. The fact that the Owner modifies and increases reasonable reporting requirements shall not serve as the basis for a claim for additional time or compensation by the Contractor.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for qualified, careful, and efficient workers and labor, eligible to work in accordance with state and federal law. Contractor shall appropriately classify all workers in accordance with the Fair Labor Standards Act, its implementing regulations, and Texas Labor Code Section 214.008. In addition, unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Before ordering any material or doing any Work, Contractor shall verify all dimensions and check all conditions in order to assure Contractor that they are the same as those in the Drawings, Specifications, and other Construction Documents. Any

inconsistency shall be brought to the attention of the Architect. In the event that discrepancies occur between ordered material and actual conditions and Architect was not notified beforehand, then costs to correct such discrepancies shall be borne by Contractor. In accordance with Texas Government Code §2269.054, these Contract Documents shall not be construed to deny or diminish the right of any person to work because of the person's membership or other relationship status with respect to any organization. In accordance with Texas Government Code §2269.0541, these Contract Documents shall also not prohibit, require, discourage or encourage a person, or discriminate against a person bidding on this contract from entering into or declining to enter into, or adhering to, an agreement with a collective bargaining organization relating to this Project.

(Paragraph deleted)

§ 3.4.2 Prevailing Wages

§ 3.4.2.1 The Project is subject to the Texas Government Code, Chapter 2258, Prevailing Wage Rates. This statute requires the Contractor and any Subcontractor to pay not less than the prevailing rates of per diem wages in the locality at the time of construction to all laborers, workmen, and mechanics employed by them in the execution of the contract.

§ 3.4.2.2 In accordance therewith, the Owner has established a scale of prevailing wages which is incorporated in the Project specifications, and not less than this established scale must be paid on the Project. Any workers not included in the schedule shall be properly classified and paid not less than the rate of wages prevailing in the locality of the Work at the time of construction.

§ 3.4.2.3 A Contractor or Subcontractor who violates the provisions of Sections 3.4.1.1 or 3.4.1.2 shall pay to Owner the sum of Sixty Dollars and No/100 (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rate stipulated in the scale of prevailing wages applicable to this Project, as required by Texas Government Code Section 2258.023(b).

§ 3.4.3 Substitutions

§ 3.4.3.1 If the Contract Documents (including the Instructions to Proposers and /or Offerors) specifically permit the submission by Contractor of requests for substitutions, Contractor may, within thirty (30) days after the Contract has been executed, make written request for the substitution of products in place of those specified in the Contract Documents to the Owner and the Architect. Any request for substitution shall be submitted to the Architect in writing, with appropriate shop drawings, product data, and certified test results substantiating the proposed product equivalence as required by this Section 3.4.3.1 and Section 3.4.3.2 and will be rejected if not so submitted.

§ 3.4.3.2 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and any modifications to the construction schedule; and (v) an affidavit stating that (a) the proposed substitution confirms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect; (c) the cost breakdown presented with Contractor's request is complete and includes all related costs, except for the Architect's redesign costs, if any, and waives all claims for additional costs related to the substitution which subsequently become apparent; (d) that the Contractor will coordinate and supervise the installation of the proposed substitute, making such changes as may be required for the Work to be complete in all respects; and (e) the Contractor will reimburse the Owner and for review or redesign services associated with any re-approval by applicable governmental authorities related to the substitution.

§ 3.4.3.3 By making requests for substitutions pursuant to Section 3.4.3 (and all subsections), the Contractor represents and certifies that: (1) Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to the product specified; (2) Contractor will provide the same warranty for the substitution product that the Contractor would have provided for the product specified; (3) the cost breakdown presented with the request is complete and includes all related costs, except for the Architect's redesign costs, if any, and waives all claims for additional costs related to the substitution which subsequently become apparent; (4) Contractor will coordinate and supervise the installation of the proposed substitute, making such changes as may be required for the Work to be complete in all respects; and (5) will reimburse Owner and Architect for review or redesign services associated with any re-approval by applicable governmental authorities related to the substitution.

§ 3.4.3.4 Owner and the Architect may accept or reject any such request for substitution in their sole discretion, based on cost, time, or other considerations. Requests for substitutions submitted after such thirty (30) day period will not be considered unless a product becomes impossible to obtain due to circumstances beyond the Contractor's control.

§ 3.4.3.5 Regardless of acceptance or rejection of substitution, the Contractor shall be responsible for amounts paid by the Owner to the Architect, to evaluate the Contractor's proposed substitutions and any amounts paid to the Architect to make agreed upon changes in the Specifications and Drawings made necessary by the Owner's acceptance of such substitutions. The Owner shall be entitled to deduct such amounts from the Contract Sum.

§ 3.4.4 Responsibility for Subcontractors

§ 3.4.4.1 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Contractor, its subcontractors and vendors shall bear responsibility for compliance with all federal, state and local laws, regulations, guidelines, and ordinances pertaining to worker safety and applicable to the Work. Contractor further recognizes that the Owner and Architect do not owe the Contractor any duty to supervise or direct his work so as to protect the Contractor from the consequences of his own conduct. THE CONTRACTOR RELEASES, INDEMNIFIES AND HOLDS HARMLESS THE OWNER FOR CONTRACTOR'S FORCES; NON-COMPLIANCE WITH OWNER'S DRUG-FREE, ALCOHOL-FREE, WEAPON-FREE, HARASSMENT-FREE, AND TOBACCO-FREE ZONES; CONTRACTOR'S FORCES NON-COMPLIANCE WITH CRIMINAL LAW; OR CONTRACTOR'S OR CONTRACTOR'S FORCES NON-COMPLIANCE WITH IMMIGRATION LAW OR REGULATIONS. Any individual found by Owner to have violated these restrictions is subject to permanent removal from the Project, at Owner's request. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance.

§ 3.4.4.2 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall be responsible for the actions of Contractor's forces, Subcontractor's forces and all tiers of Sub-subcontractor's forces. The Contractor recognizes that the Work may be performed in connection with an operational educational facility or the Project site may be adjacent to a public-school campus. It is imperative that Contractor's operations and the performance of the Work not interfere with, interrupt, disturb or disrupt Owner's normal operations or facilities. Contractor shall exercise the utmost skill and judgment to ensure that continuing construction activity will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Contractor recognizes that the ongoing activities in proximity with its construction activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises. Such coordination and adequate site access shall be the responsibility of Contractor. Contractor understands and accepts the difficulties and costs associated with working at or near an operational campus and the potential delays and disruptions in its Work and has included such items in the Contract Time and the Contract Sum.

§ 3.4.5 Criminal History Records Checks

§ 3.4.5.1 Unless otherwise exempt from providing such information by any provision in Texas Education Code, Section 22.08341 (the "Statute"), the Contractor agrees, that prior to commencement of work under this Agreement, using the form promulgated by the Owner or such other form approved by the Owner, Contractor will arrange with the Owner to obtain any national criminal history record information ("CHRI") required pursuant to Texas Education Code, Section 22.08341 (the "Statute") on all of Contractor's employees, independent contractors, agents, or Subcontractors, Contractor's Subcontractors of every tier ("Subcontractors"), Subcontractors' employees, independent contractors, agents, or sub-subcontractors, if any of these persons is a "Covered Employee" as defined by the Statute, i.e. the person has or will have continuing duties related to the contracted for services, and said person has or will have the opportunity for direct contact with students in connection with those continuing duties and shall reimburse the Owner for the costs and expenses associated with obtaining the criminal history information. For purposes of this Section 15.3 a person does not have the opportunity for direct contact with students if:

- .1 the public work does not involve the construction, alteration, or repair of an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by the Texas Education Code ("Instructional Facility");

- .2 for a public work that involves construction of a new Instructional Facility, the person's duties related to the contracted services will be completed not later than the seventh (7th) day before the first date the facility will be used for instructional purposes; or
- .3 for a public work that involves an existing Instructional Facility:
 - (a) the public work area contains sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than six feet in height; and
 - (b) the Contractor adopts a policy prohibiting employees, including subcontractor entity employees, from interacting with students or entering areas used by students, informs employees of the policy, and enforces the policy at the public work area.

§ 3.4.5.3 Any Covered Employee that has during the preceding thirty (30) years, been convicted of one of the following offenses, if at the time of the offense the victim was under eighteen (18) or enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense to (a) or (b) under federal law or the laws of another state ("Disqualifying Criminal History") shall be disqualified and prohibited from performing any contract duties or services and neither the Contractor nor its Subcontractor may permit such person to provide services at an instructional facility. If a Covered Employee is determined by the Owner's review of the CHRI to have a Disqualifying Criminal History, Contractor will exclude that person from assignment to the Project. Contractor understands that it will not have access to the results of such criminal history records check, based on statewide regulations beyond the control of the Owner, and agrees to rely solely on the judgment of the Owner as to whether the Covered Employee must be excluded from the Project.

§ 3.4.5.4 Prior to commencement of its work on the Project the Contractor will provide written certification to the Owner that either: (1) Contractor and its Subcontractors of every tier, do not have any Covered Employees, as defined; (2) are otherwise exempt from compliance with the Statute; or (3) has complied with the statutory and contractual requirements stated in this Section 15.3 and 15.4 of this Agreement as of that date, and that it:

- .1 has requested a Criminal History Records Check through the District on all Covered Employees, if any, of every tier, has provided the required information to the District to do so and reimbursed the District for same;
- .2 has obtained written certification from its independent contractors, and Subconsultants (of any tier) that they have provided the required information to the Consultant, necessary to secure the information from the District and reimbursed the Consultant for same; and
- .3 have excluded any Covered Employee reported by the District to have a Disqualifying Criminal History from assignment to the Project.

Further, Consultant agrees that if it receives information that a Covered Employee is arrested or convicted for any of the Disqualifying Criminal History offenses, during the performance of the Work, Consultant will immediately remove the Covered Employee from District's property or other location where students are regularly present, and notify the District of said removal within three (3) days of doing so. Consultant understands that any failure to comply with the requirements of this section may be grounds for termination of this Agreement, in accordance with Article VI, Termination.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor further warrants that Contractor shall perform the Work in a good and workmanlike manner, continuously and diligently in accordance with all applicable codes, generally accepted standards of construction practice for construction of projects similar to the Project. All materials shall be installed in a true and straight alignment, level and plumb; patterns shall be uniform; and jointing of materials shall be flush and level, unless otherwise directed in writing by the Architect. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. No acceptance or payment by the Owner shall constitute a waiver of the foregoing and nothing herein shall exclude or limit any warranties implied by law. The warranties provided in this Section 3.5.1 are in addition to , and

not in limitation of, any other warranties, remedies and/or guaranties set out in the Contract Documents or under applicable law.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 Contractor acknowledges that the Project may involve construction work on more than one (1) building for the Owner. In such case, each building, or approved phase of each building, may have its own, separate, and independent date of Substantial Completion (or, for Work to be completed or corrected after the date of Substantial Completion, the Warranty Commencement Date). Contractor shall maintain a complete and accurate schedule of the date(s) of Substantial Completion, the date(s) of Final Completion, and the dates upon which the warranties under granted in the Contract Documents will expire, on each phase or building and will provide a copy of such Schedule to the Owner, as required in Subsection 3.5.6, as a condition precedent to Final Payment.

§ 3.5.4 When deemed necessary by the Owner and prior to installation of any item specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, Contractor shall furnish proof of conformance to the Architect. Proof of conformance shall be in the form of an affidavit from the manufacturer certifying that the item is in conformance with the applicable standards; an affidavit from a testing laboratory certifying that the product has been tested within the past year and is in conformance with the applicable standards; or such further reasonable proof as is required by the Architect.

§ 3.5.5 The Contractor agrees to assign to the Owner at the time of Final Completion of the Work any and all manufacturer's warranties relating to equipment, machinery, materials, equipment or components and labor incorporated into the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. Contractor shall take no action or fail to act in any way which results in the termination or expiration of such third-party warranties or which otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations. The warranties provided in this Section 3.5 or otherwise provided in the Contract Documents or by law, shall in no way limit or abridge the warranties provided by the suppliers of equipment and systems which are to comprise a portion of the Work. A complete set of all warranties required from contractors, manufacturers, or suppliers as appropriate, on the manufacturer's or supplier's approved forms, executed by Contractor as required, with a Warranty Commencement Date noted as required, and in the form required by Subparagraph 3.5.6 shall be submitted to the Architect for delivery to the Owner, as a condition precedent to Final Payment.

§ 3.5.6 Prior to receipt of Final Payment, Contractor shall: (1) obtain duplicate original warranties, executed by all subcontractors, and the warranties of suppliers and manufacturers, noting the Warranty Commencement Date on the face of each; (2) verify that the documents are in proper form and contain full information; (3) Co-sign warranties when required; (4) bind all warranties in commercial quality 8-1/2 X 11 inch three-ring binder, with hardback, cleanable, plastic covers; (5) label the cover of each binder with a typed or printed title labeled "WARRANTIES", along with the Title of the Project; name, address and telephone number of Contractor; and name of its responsible principal; (6) include a Table of Contents, with each item identified by the number and title of the specification section under which the product is specified; (7) include the Schedule of Warranty Commencement Dates required by Subparagraph 3.5.3; (8) separate each warranty with index tab sheets keyed to the Table of Contents listing; and (8) deliver warranties in the form described in this Subparagraph 3.5.6, to the Architect for review same prior to submission to the Owner.

§ 3.6 Taxes

The Contractor shall not include in the Contract Price or any Modification any amount for sales, use, or similar taxes for which (1) a Texas independent school district is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

CONTRACTOR HEREBY RELEASES, INDEMNIFIES, AND HOLDS HARMLESS OWNER FROM ANY AND ALL CLAIMS AND DEMANDS MADE AS A RESULT OF THE FAILURE OF CONTRACTOR OR ANY SUBCONTRACTOR TO COMPLY WITH THE PROVISIONS OF ANY OR ALL SUCH LAWS AND REGULATIONS.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time proposals are received or negotiations concluded. The Owner shall be responsible for payment of TDLR Texas Accessibility submissions and inspection costs.

§ 3.7.2 In performing its obligations hereunder, the Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work and upon request by the Owner or Architect shall furnish evidence, satisfactory to the Owner, of such compliance.

§ 3.7.3 If the Contractor performs Work when Contractor knows or reasonably should have known it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, the Contract Documents, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. **THE CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER, ITS TRUSTEES, OFFICERS, REPRESENTATIVES, AGENTS AND EMPLOYEES FROM AND AGAINST ALL THIRD-PARTY CLAIMS, FINES, PENALTIES, OR LIABILITIES FROM, ARISING OUT OF, OR BASED UPON CONTRACTOR'S VIOLATION OF ANY LAWS, ORDINANCES, RULES, REGULATIONS, ORDERS OR DECREES.**

(Paragraphs deleted)

§ 3.7.4 Claims for Concealed or Unknown Conditions

Contractor acknowledges that there may exist at the Project site certain soil and geological conditions and/or surface physical conditions which are not disclosed in the Contract Documents, and which have been known to or may be reasonably anticipated to occur in the area or be related to any past use of the Project site, including, without limitation, the presence of rock and its hardness, geologic formations, differing soils, and surface structures, equipment or other impediments, either natural or man-made (collectively, "Subsurface Conditions"). Owner makes no representations or warranties regarding Subsurface Conditions at the Project site, or of the accuracy or continuity of conditions which may be noted in any reports furnished or made available to Contractor. Contractor covenants and agrees that any such reports are furnished or made available by Owner to Contractor for information purposes only, and Contractor acknowledges that Owner is not responsible for the content thereof. Contractor shall be responsible for inspecting the site and determining the existence or likelihood of any Subsurface Conditions which may affect the Contract Time or the Contract Sum, or both. The Contract Time and the Contract Sum contained herein (as proposed by Contractor), or GMP as applicable, shall be deemed to include all costs of and sufficient time to complete all Work associated with or attributable to Subsurface Conditions, and Contractor shall not be entitled to submit a claim for or to obtain an extension of the Contract Time or increase in the Contract Sum due to the existence of Subsurface Conditions. Except as provided above with respect to Subsurface Conditions, if the Contractor encounters conditions at the site that are subsurface or otherwise concealed physical conditions which were not known to the Contractor, and that differ materially from those indicated in the Contract Documents the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed, and in no event later than three (3) days after first observance of the conditions and report its findings to the Owner and Architect.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Time arising from the existence of such remains or features may be made as provided in Article 15. In accordance with the terms of this Agreement, there will be no adjustment to the Contract Sum for delay arising out or related to the circumstances described in this Section 3.7.5.

§ 3.7.6 The Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. Contractor's obligations under this Section do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites.

However, any drainage alterations made by Contractor during the construction process which require the issuance of a permit shall be at Contractor's sole cost.

§ 3.7.7 The Contractor shall certify in writing that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by Local/State standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Instruments of Service related to Contract Closeout.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner within such time as is reasonably specified by the Contractor as necessary to avoid delay in the Work.

§ 3.8.4 When performing Work under Allowances, where reasonably possible, Contractor shall solicit and receive no fewer than three (3) written proposals and shall provide the Work on the basis of the best value for the Owner, as directed by the Architect following Owner's written approval of the cost proposal.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor shall not replace the Superintendent prior to Final Completion of the Work unless (1) the Superintendent shall cease to be employed by the Contractor or its subsidiaries or affiliated companies, or (2) the Owner agrees to such replacement. The Superintendent may not be employed on any other project prior to Final Completion of the Work. From Substantial Completion to Final Completion, the Superintendent shall be on-site as necessary to ensure that Final Completion occurs within thirty (30) days of Substantial Completion.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish a list to the Architect a list of all engineers, consultants, job-site superintendents, subcontractors and suppliers involved in construction. The Architect shall provide such information to the Owner. The Owner shall have the right, at any time, to require a change in any engineer, consultant, job-site superintendent, subcontractor or supplier if their performance is deemed unsatisfactory in its sole discretion.

§ 3.9.3 The Contractor shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to dismiss from the Work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.

§ 3.9.4 Owner shall be notified as soon as Contractor becomes aware, but in no event fewer than twenty-four (24) hours before the time of that the Superintendent is required to be present at the site, that the Superintendent will not be present at the site for any reason, except illness. If the reason is due to illness, then Owner shall be notified as soon as the Contractor obtains the information, but in no event later than the beginning of the day that the Superintendent will be absent from the site. In such event of such absence, the Contractor will designate a person as acting superintendent

and Contractor promptly notify the Owner of the identity and contact information for the designated acting superintendent.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work, utilizing critical path method scheduling techniques. The Schedule shall not exceed the time limits set forth in the Contract Documents. The Schedule shall thereafter be updated on a monthly basis and submitted with each Application For Payment. The receipt of an updated schedule with each Application For Payment shall be a condition precedent to the Owner's duty to make any payment pursuant to Article 9.6. The schedule shall not interfere with the operation of Owner's existing facilities and operations without Owner's prior written approval.

§ 3.10.1.1 Each Schedule shall: (1) break the work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Contractor, Owner, and Architect and shall assign each scheduled activity a cost value consistent with the Schedule of Values so as to allow the Owner and Contractor to project cash flow for the Project; (2) include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment or other items for which the Architect is required to review submittals, shop drawings, product data, or samples; (3) with the exception of the initial schedule, shall indicate the activities, or portions thereof, which have been completed; (4) shall reflect the actual time for completion of such activities, and shall reflect any changes to the sequence or planned duration of all activities.

§ 3.10.1.2 If any updated Schedule exceeds the time limits set forth in the Contract Documents for completion of the Work, the Contractor shall include with the updated Schedule, a statement of the reasons for the anticipated delay in completion of the Work and the Contractor's planned course of action for completing the Work within the time limits set forth in the Contract Documents. If the Contractor asserts that the failure of the Owner or the Architect to provide information to the Contractor is the reason for anticipated delay in completion, the Contractor shall also specify what information is required from the Owner or Architect and documentation of the date such information was requested.

§ 3.10.1.3 Neither the Owner or the Contractor shall have exclusive ownership of float time in the schedule, and all float time shall inure to the benefit of the Project. The Contractor agrees to use its best efforts not to sequence the Work or assign activity durations so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.

§ 3.10.1.4 Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. Submission of any schedule under this Contract constitutes a representation by the Contractor that: (1) the schedule represents the sequence in which the Contractor intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and durations used to prosecute the completed Work; (3) that to the best of its knowledge and belief the Contractor is able to complete the remaining Work in the sequence and time indicated; and, (4) that the Contractor intends to complete the remaining Work in the sequence and time indicated.

§ 3.10.1.5 The Contractor shall recommend to the Owner and to the Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions as recommended by the Contractor. Upon the Owner's acceptance of the Contractor's Stipulated Sum proposal or Guaranteed Maximum Price, as applicable, all contracts previously entered into by Owner shall be assigned by Owner to the Contractor who shall accept responsibility for such contracts as if it had initially entered into such contracts. Contractor shall expedite the delivery of long-lead time items. The Contractor shall receive and protect all Owner supplied material.

§ 3.10.1.6 The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's

construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect and shall attend progress meetings at the Project Site, in such frequency as are acceptable to the Owner. Progress of the work shall be reported at said meetings with reference to Contractor's construction schedule.

§ 3.10.4 The Contractor shall submit to the Architect with each monthly application for payment a copy of the progress schedule showing all modifications required, and shall take whatever corrective action is necessary to assure that the project completion schedule is met at no additional cost to Owner, except as allowed herein.

§ 3.10.4 Correction of Delay.

§ 3.10.4.1 In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, or any Milestone Date unless any such adjustment is submitted by the Contractor as a Claim in compliance with Article 15 or the adjustment is otherwise agreed to in a written confirmation from the Owner and documented by written Change Order.

§ 3.10.4.2 If at any time the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.4. The Owner may exercise the rights furnished the Owner under or pursuant to this Subparagraph 3.10.4 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

§ 3.10.4.3 In the event Contractor determines that the Scheduled Completion Date cannot be met by resequencing the Work, then Contractor shall immediately provide to the Owner, and in any event within seven (7) days after the date of receipt of any request by Owner for resequencing or acceleration, a plan to complete the Work in the shortest possible time. No approval by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor pursuant to this paragraph shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Scheduled Completion Date.

§ 3.11 Documents and Samples at the Site

The Contractor shall maintain and make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, field test records (including environmental inspection and test records), inspection certificates or records, manufacturers' certificates, The Documents to be maintained shall be kept in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner or their respective representatives, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. Specific dimensions, quantities, installation and performance of equipment and systems in compliance with the Construction Documents and the Contract Documents remain the Contractor's responsibility.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect, in writing, of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Contractor represents and warrants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawings are prepared and, if required by the Architect or applicable law, by a licensed engineer. The Owner and the Architect shall be entitled to rely upon the adequacy, completeness and accuracy of the services, certifications, and approvals performed or provided by such design professionals. Pursuant to

this Section 3.12.10.1, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. A registered architect must prepare plans and specifications for all the Work, as governed by the Texas Occupations Code Chapter 1051; and a registered engineer must prepare plans, specifications and estimates for all Work governed by Texas Occupations Code Chapter 1001. In the event that Contractor retains a licensed design professional under the terms of this paragraph, Contractor shall require that the licensed design professional carry commercial general liability and errors and omissions insurance coverage in the same amounts and forms as required of the Architect on this Project. In the event that the licensed design professional retained by the Contractor will be conducting on-site services or observations, the licensed design professional shall also carry worker's compensation insurance and comprehensive automobile liability in the same amounts and forms as required of the Architect on this Project.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

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

§ 3.13 Use of Site

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

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

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

§ 3.14 Cutting and Patching

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

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall, on a daily basis, keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. Contractor shall provide on-site containers for the collection of waste materials, debris and rubbish, and shall periodically remove waste materials, debris and rubbish from the Work and dispose of all such materials at legal disposal areas away from the site. All cleaning operations shall be scheduled so as to ensure that contaminants resulting from the cleaning process will not fall on newly-coated

or newly-painted surfaces. Immediately after unpacking materials, all packing case lumber or other packing materials, wrapping or other like flammable waste shall be collected and removed from the building and premises. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project. Prior to the Architect's inspection for Substantial Completion, the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, putty, soil, paint and foreign substances from all surfaces, including glass and painted surfaces; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roofs, gutters, and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site; clean and polish all floors; clean and polish all hardware; and repair all Work damaged during cleaning and replace any damaged or broken glass.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor. Such reimbursement amounts may be deducted from Contractor's Final Payment Application.

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

THE CONTRACTOR SHALL PAY ALL ROYALTIES AND LICENSE FEES. TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES DEFEND AGAINST ANY AND ALL SUITS, CLAIMS, LAWSUITS, JUDGMENTS, COSTS, LIENS, LOSSES, EXPENSES, FEES (INCLUDING REASONABLE ATTORNEY'S FEES, AS PERMITTED BY STATUTE), PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY FOR INFRINGEMENT OF COPYRIGHTS AND PATENT RIGHTS ALLEGED TO HAVE RESULTED FROM CONTRACTOR'S INFRINGEMENT, AND SHALL INDEMNIFY AND HOLD THE OWNER THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM LOSS ON ACCOUNT THEREOF, INCLUDING ATTORNEY'S FEES (AS PERMITTED BY STATUTE), BUT SHALL NOT BE RESPONSIBLE FOR DEFENSE OR LOSS WHEN A PARTICULAR DESIGN, PROCESS, OR PRODUCT OF A PARTICULAR MANUFACTURER OR MANUFACTURERS IS REQUIRED BY THE CONTRACT DOCUMENTS, OR WHERE THE COPYRIGHT VIOLATIONS ARE CONTAINED IN DRAWINGS, SPECIFICATIONS, OR OTHER DOCUMENTS PROVIDED BY THE OWNER OR PREPARED BY THE ARCHITECT. HOWEVER, IF AN INFRINGEMENT OF A COPYRIGHT OR PATENT ATTRIBUTABLE TO THE OWNER OR ARCHITECT, IS DISCOVERED BY, OR MADE KNOWN TO, THE CONTRACTOR, THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOSS UNLESS THE INFORMATION IS PROMPTLY FURNISHED TO THE OWNER AND THE ARCHITECT.

§ 3.18 Indemnification

§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SHALL INDEMNIFY, DEFEND (EXCEPT AS LIMITED BELOW) AND HOLD HARMLESS THE OWNER, THE OWNER'S TRUSTEES, OFFICERS, AGENTS AND EMPLOYEES (HEREINAFTER IN THIS SECTION 3.18 "OWNER"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES, AS PERMITTED BY STATUTE), ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF), INCLUDING THE LOSS OF USE RESULTING THEREFROM, CAUSED IN WHOLE OR IN PART BY THE WILLFUL, INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED IN PART BY THE OWNER. IF THE OWNER'S NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND

CONTRACTOR ARE BOTH PARTIES. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS SECTION 3.18.

§ 3.18.2 IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION 3.18 BY AN EMPLOYEE OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER SECTION 3.18.1 SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR A SUBCONTRACTOR UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS.

§ 3.18.4 THE DUTY TO DEFEND SET OUT ABOVE SHALL NOT APPLY IN THE EVENT THAT THE CLAIM IS BASED, IN WHOLE OR IN PART, ON THE NEGLIGENCE OF, FAULT OF, OR BREACH OF CONTRACT BY THE OWNER. NOTWITHSTANDING THE FOREGOING, THE CONTRACTOR AGREES TO REIMBURSE THE OWNER'S REASONABLE ATTORNEY'S FEES IN PROPORTION TO THE CONTRACTOR'S LIABILITY.

§ 3.18.5 CONTRACTOR SHALL BE RESPONSIBLE FOR AND SHALL HOLD OWNER FREE AND HARMLESS FROM LIABILITY RESULTING FROM LOSS OF OR DAMAGE TO CONTRACTOR'S OR ITS SUBCONTRACTORS' CONSTRUCTION TOOLS AND EQUIPMENT AND RENTED ITEMS WHICH ARE USED OR INTENDED FOR USE IN PERFORMING THE WORK, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE WILLFUL, INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE CONTRACTOR, OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED IN PART BY THE OWNER. IF THE OWNER'S NEGLIGENCE IS A CONCURRENT CAUSE OF THE INJURY, DEATH, OR DAMAGE, CONTRACTOR'S OBLIGATION TO INDEMNIFY IS LIMITED TO THE AMOUNT NECESSARY TO CAUSE THE RELATIVE LIABILITY OF OWNER AND CONTRACTOR TO REFLECT THE COMPARATIVE NEGLIGENCE FINDINGS OF THE TRIER OF FACT (JUDGE OR JURY) OR AS AGREED IN A SETTLEMENT AGREEMENT TO WHICH OWNER AND CONTRACTOR ARE BOTH PARTIES. THIS PROVISION SHALL APPLY, WITHOUT LIMITATION, TO LOSS OR DAMAGE OCCURRING AT THE WORK SITE OR WHILE SUCH ITEMS ARE IN TRANSIT TO OR FROM THE WORK SITE AND IS IN ADDITION TO CONTRACTOR'S OBLIGATIONS UNDER SECTION 3.18.1.

§ 3.18.6 The indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing thereunder for protection, occupational safety and health to workmen. It being agreed that the primary obligation of the Contractor is to comply with said statutes in performance of the Work by Contractor and that the obligations of the Owner under said statutes are secondary to that of the Contractor.

§ 3.18.7 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under Section 3.18, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

§ 3.18.8 Contractor shall promptly advise the Owner, in writing, of any claim or demand against the Owner or Contractor, known to the Contractor related to or arising out of Contractor's activities under this Contract.

§ 3.18.9 The provisions in Section 3.18 in its entirety shall survive the completion, termination or expiration of this contract and are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

§ 3.19 Representations And Warranties

§ 3.19.1 The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which

representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

- .1 that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
- .2 that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;
- .4 that the execution of the Contract and its performance thereof is within its duly authorized powers; and
- .5 that its duly authorized representative has visited the site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

§ 3.20 Business Standards

§ 3.20.1 Contractor, in performing its obligations under Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of Owner or affiliates. Contractor shall review, with Owner, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Contractor's employees and agents in their relations with Owner's employees, agents, and representatives, vendors, Subcontractors, and other third parties, and those relating to the placement and administration of purchase orders and contracts.

§ 3.21 Antitrust Violation

To permit the Owner to recover damages suffered in antitrust violations, Contractor hereby assigns to Owner any and all claims for overcharges associated with this Contract which violate the antitrust laws of the United States, 15 U.S.C.A. Section 1 et seq. The Contractor shall include this provision in its agreements with each subcontractor and supplier. Each subcontractor shall include such provisions in agreements with sub-subcontractors and suppliers.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner,

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date of the Owner's contract with the Architect terminates. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, or as they may be amended in the future.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents, and delivered on time. In addition, the Architect or its structural consultant will (1) provide on-site observations prior to and during all concrete pours that contribute to the structural integrity of the building, including all pours of concrete piers, footings, grade beams, floor slabs, and concrete superstructure components, if applicable; and (2) provide on-site observations prior to covering up or closing up of portions of the construction which, if covered, would conceal problems with the structural integrity of the Project. Contractor shall not close or cover said Work until said observations have occurred. Contractor or Architect will advise Owner of the need for any third-party laboratory or testing services to assist the Architect and Owner.

§ 4.2.3 On the basis of the site observations, the Architect will keep the Owner informed about the progress and quality of the Work. The Architect shall promptly report to the Owner and Contractor orally regarding: (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the

Contractor, and (3) defects and deficiencies observed in the Work. An oral notification of defects and deficiencies observed in the Work shall be followed by a notice in writing to the Owner and Contractor specifying the defect(s), non-conforming Work, deviations from the Contract Documents and corrective actions taken or recommended. The Architect shall not have control over or responsibility for the Contractor's construction means, methods, techniques, sequences, procedures, or safety programs and will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents, nor shall the Architect have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. This does not, however, relieve Architect of Architect's responsibilities under this Agreement. Any services by Contractor made necessary by Contractor's construction defect or nonconforming Work shall be performed by the Contractor at no additional cost to Owner. In addition, the Contractor shall reimburse the Owner for compensation paid to the Architect (whether performed by the Architect or its Consultants) or the Owner's Consultants, for additional site visits made necessary by the fault, neglect, the request of the Contractor or made necessary by the Contractor's construction defect or nonconforming Work. Any amount subject to reimbursement under this Section may be required by Owner to be deducted from the next Payment Application submitted by the Contractor and any subsequent Payment Application until paid, and if any amount remains unpaid, the balance shall be paid by the Contractor as a condition to Final Payment.

§ 4.2.4 Communications

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters relating to the Contract and the Project. However, the Owner reserves the right to communicate directly with the Contractor and Subcontractors. Communication by and with the Architect's consultants shall be through the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, in accordance with the Contract Documents, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect or the Owner has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, the Architect or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. Certain portions of the Work may be tested and/or observed at various stages, sometimes off the Project site, between initial observation or review and final positioning of the completed Work. Nothing in any initial or prior approval or test result shall prevent action to require conformance, if at any subsequent time the Work or any portion thereof is found not to conform to the requirements of the Contract Documents. Architect and/or Contractor shall promptly notify, the other party orally and in writing, and Owner of any perceived fault or defect in the design or nonconformance of the Work with the Construction Documents they may respectively discover and each, upon discovery of the defect or nonconformance, shall be responsible for notifying the other party and Owner of those corrective actions they respectively take; provided, however, Contractor shall have no duty to notify Owner of discoveries made or actions taken by Architect.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or Separate Contractors, and allow sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any

construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. If any submittal does not comply with the requirements of the Contract Documents, the Architect shall require Contractor to come into compliance. The Architect shall promptly report in writing to the Contractor and Owner any errors, inconsistencies and omissions discovered by the Architect in the Shop Drawings, Product Data and Samples, so as to keep from delaying the Work or the activities of the Owner, Contractor or other Contractors.

§ 4.2.8 The Architect will prepare, and make written recommendations to Owner regarding all Change Orders (including changes in the Work to be paid from contingency funds) and Construction Change Directives, for the Owner's approval and execution in accordance with the Contract Documents. The Architect's recommendation shall be accompanied by all supporting documentation necessary for the Owner to make an informed decision, including but not limited to an itemized turn-key proposal from the Contractor which includes quantities and unit costs of labor and materials extended and totaled and, if permitted, overhead and profit proposed. Prior to submission of such documentation to the Owner, the Architect shall review such proposals for reasonableness of pricing and compliance with Section 7.1.4 regarding markup. The Architect may order minor changes in the Work not involving an adjustment in Contract Sum or Guaranteed Maximum Price, or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. The Architect is specifically **not** authorized to approve changes involving major systems such as: Heating, Ventilation and Air Conditioning ("HVAC"); roof; foundation; outward appearance; color schemes; floor plans; building materials; drainage or mechanical equipment without Owner's prior written consent.

§ 4.2.9 The Architect and the Owner's representative will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion. Upon completion of such inspection and agreement by Owner and Architect as to Substantial Completion, the Architect may issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10 for approval by the Owner.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 Upon written request of the Owner or Contractor, the Architect will issue its interpretation of the requirements of the plans and specifications. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by the Owner.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information at no additional expense to the Owner.

§ 4.2.15 The Architect may appoint an employee or other person to assist the Architect during the construction. These representatives will be instructed to assist the Contractor in interpreting the Contract Documents; however, such assistance shall not relieve the Contractor from any responsibility as set forth by the Contract Documents. The fact that the Architect's Representative may have allowed Work not in accordance with the Contract Documents shall not prevent the Architect from insisting that the faulty Work be corrected to conform to the Contract Documents and the Contractor shall correct same.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect, in writing, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect shall notify the Contractor in writing, whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. A notice of no reasonable objection shall in no way relieve the Contractor from full responsibility for performance and completion of the Work and its obligations under the Contract Documents. The Contractor shall be fully responsible for the performance of its subcontractors, including those recommended or approved by the Owner.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. When the parties agree on a proposed substitute Subcontractor reasonably capable of performing the Work, the Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected without providing reasonable written notice to the Owner and Architect. If neither the Owner nor Architect submits a reasonable objection to such proposed substitution within ten (10) days following their receipt of written notice the Contractor may proceed with the substitution. If either Owner or Architect submit an objection, the Subcontractor shall proceed in accordance with Section 5.2.3 above.

§ 5.2.5 Each Contractor or subcontractor shall be required to completely familiarize itself with the plans and specifications, to visit the Work site to completely familiarize itself with existing conditions, and to conduct any other appropriate investigations, inspections or inquiries prior to submission of a bid or proposal. No increases in Contract Sum shall be allowed for failure to so inspect or investigate.

§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. The terms and conditions of the Contract Documents shall be incorporated by reference into each subcontract agreement, included as provided below. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to

which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Each subcontractor shall provide proof of insurance to Contractor consistent with the Contractor's insurance to Owner and in an amount commensurate with the Work to be performed by the Subcontractor.

§ 5.3.2 Neither the Owner nor the Architect shall be obligated to pay or to insure the payment of any monies to Subcontractors or vendors by the Contractor.

§ 5.3.3 The Contractor shall require any potential Subcontractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor, the Architect or the Owner and the potential Subcontractor prior to entering into a contract. Contractor shall report to Owner all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated Subcontractor.

§ 5.4 Contingent Assignment of Subcontracts

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

- .1 assignment is effective only after termination of the Contract by the Owner or abandonment of the Project by the Contractor and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing;
- .2 assignment is subject to the prior rights and obligations of the surety, if any, obligated under bond relating to the Contract; and
- .3 The Subcontractor provides bonds as required by law of prime contractors and by Owner.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

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

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

§ 5.5 Notice Of Subcontractor Default

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

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

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

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

§ 6.1.4 [Paragraph Deleted.]

§ 6.2 Mutual Responsibility

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

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

§ 6.2.3 All costs resulting from the Contractor's negligence, lack of oversight, inattention to detail, failure to investigate, or failure to follow the Construction Documents or Contract Documents, will be borne by the Contractor. The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor, the Architect or any Consultant because of the Contractor's delays, improperly timed activities or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.1.4 Change Order Mark-Up. On Change Orders and Construction Change Directives, the total Contractor mark-up for overhead, profit permitted to be charged to the Owner shall be based on the following schedule:

- .1 for work performed by the Contractor's own forces, Contractor's mark-up for overhead and profit shall not exceed 10% of the cost of the change in the Work (0% for change orders to be paid out of any contingency allowance).
- .2 for the Contractor, for supervision of work performed by the Contractor's Subcontractors, the total Contractor mark-up for overhead and profit shall not exceed 4% of the amount due to the Subcontractors (0% for change orders to be paid out of any contingency allowance).
- .3 for each Subcontractor or Sub-subcontractor involved, in Work performed by that Subcontractor's or Sub-subcontractor's own forces, the total mark-up for overhead and profit ten percent (10%) of the cost of the change in the Work.
- .4 In no event shall total mark-up for overhead, profit or fee in any work which involves a subcontractor or one or more sub-subcontractors, regardless of who performs the work, exceed 14% of the total cost of the change in the Work. The Contractor will not be allowed an overhead, profit, or fee mark-up when changes in the Work are funded by Contingency or other Allowances provided for in the Contract Documents.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

Methods used to determine adjustments to the Contract Sum or Guaranteed Maximum Price may include those listed in Section 7.3.3.

§ 7.2.2 Acceptance of a disbursement from any allowance fund, contingency fund or acceptance of a Change Order by the Contractor shall constitute full accord and satisfaction for any and all claims, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the disbursement or Change Order.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum (the Guaranteed Maximum Price, as applicable) or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum (the Guaranteed Maximum Price, as applicable) and Contract Time being adjusted as provided in Section 7.3.3.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum (or the Guaranteed Maximum Price, as applicable), the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon (additional mark-ups for overhead and profit will not be allowed);
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee, subject to the limitations of subparagraph 7.1.4; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum (or the Guaranteed Maximum Price, as applicable), the Architect shall determine the adjustment on the basis of the amount by which the Contractor's direct costs have actually been increased over the direct cost of performing the Work without the Change in the Work. Direct costs shall be limited to the following:

- .1 Actual documented costs of labor, including applicable payroll taxes and other employee costs approved by the Owner prior to the approval of the Change Order or Contingency Authorization Order (a labor burden factor will not be accepted as documentation);
- .2 Actual documented costs of materials, supplies, and equipment, including cost of transportation, whether such materials, supplies, and equipment are incorporated or consumed;
- .3 Actual documented rental costs of machinery and equipment, if rented from unaffiliated third-parties, exclusive of hand tools;
- .4 Actual documented costs of premiums for all bonds and insurance, permit fees, and applicable sales, use, or similar taxes, directly related to the change, if any; and
- .5 Actual documented costs of supervision and field office personnel directly attributable to the change and only if the adjustment causes an extension of the Contract Time.

The Contractor shall keep and present, in such form as the Architect or Owner may prescribe, an itemized accounting of the items listed above, together with appropriate supporting documentation.

§ 7.3.5 If the Work is performed without an agreement as to the final price, the Contractor shall, at a minimum, retain and provide to the Owner, the following documentation to adequately document its actual costs of performing the scope of work set out in a Construction Change Directive. Adequate Documentation shall include at a minimum, but not limited to, payroll records for employees of Contractor providing the Work included in the Change Directive, as well as written documentation of time spent solely on the scope of the Change Directive Work, prepared concurrent with the performance of the Work, including (for example) sign-in and sign-out sheets or time cards, executed by the employee(s) documenting attendance and receipts for all materials delivered to the Project site for incorporation in the Work of the Change Directive and paid for by the Contractor. If any of the Work of the Change Directive is performed by subcontractors, the Contractor shall provide a copy of the subcontract, an itemized invoice or payment application which includes, in either case, a detailed itemization of costs showing quantities and unit costs of labor and materials extended and totaled and, if permitted, overhead and profit (in accordance with Section 7.1.4) labor and materials provided by the subcontractor, with receipted invoices for all materials incorporated in the Work and evidence of payment by the subcontractor attached. If the Contractor disagrees with the adjustment in the Contract Time, the Contract Sum (or the Guaranteed Maximum Price, as applicable), allowed in any Change Directive, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement (by executing and returning the Change Directive) or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time, not later than ten (10) calendar days following the Contractor's receipt of the Construction Change Directive. A copy of a notice of disagreement shall also be provided to the Owner concurrent with the notice to the Architect. A Notice of Disagreement must contain the number of the Change Directive, the date the Change Directive was issued and the words "**Notice of Disagreement With Change Directive**" in the Subject line. It is imperative that Owner receive timely specific notice of any potential problem identified by Contractor in order that the problem can be mitigated or resolved promptly.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and/or the Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost plus the permitted overhead and profit as set forth in Section 7.1.4. When both additions and credits covering related Work or substitutions are involved in a change, both changes shall be shown on the same Change Order and the permitted allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change. Returned materials shall be credited at actual cost and no penalty or restocking fee shall be permitted to be charged to the Owner.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will require as a condition precedent to certification of payment for Work completed under the Construction Change Directive that the Contractor provide the documentation required by Section 7.3.4, and based on such documentation, shall make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect is specifically authorized by this Section 7.3.9 to require submission of such documentation and any other documentation required to evaluate the requested payment, and shall withhold payment certification until such documentation is received and an interim determination is made in accordance with this Section. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order reflecting the Agreement of the Owner and Contractor. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

With prior written notice to the Owner's representative, the Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. The Contractor shall carry out such written orders promptly. Minor changes in the Work shall not include changes that involve the outward appearance of the structure, color schemes, floor plans, building materials, landscaping, or mechanical equipment.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 Commencement. The date of commencement of the Work shall be the first business day following the Contractor's written notice to proceed. The notice to proceed shall not be issued until the Agreement (or Guaranteed Maximum Price Amendment, as applicable) has been signed by the Contractor and the Owner, and the Owner and Architect have received and approved as to form all required payment and performance bonds and insurance as required by Article 11.

§ 8.1.3 Substantial and Final Completion

§ 8.1.3.1 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.3.2 The date of Final Completion is the date certified by the Architect in accordance with Section 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than thirty (30) days after the date of Substantial Completion.

§ 8.1.4 Day. The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor stipulates that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2.4 Liquidated Damages

§ 8.2.4.1 If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor and the Contractor's surety, as liquidated damages and not as a penalty, the per diem amounts set out in the AIA Document A101 (2017) or the AIA Document A133 (2019) into which these General Conditions are incorporated and executed concurrently with these General Conditions, commencing upon the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable estimate of damages the Owner will incur as a result of delayed completion of the Work.

§ 8.2.4.2 In the event Substantial Completion is not achieved by the designated date, or as it may be extended, Owner may withhold payment of any further sums due until Substantial Completion is achieved. Owner shall also be entitled to deduct out of any sums due to Contractor all liquidated damages, if any, due Owner in accordance with the Contract Documents.

§ 8.2.4.3 In addition to Liquidated Damages, if any, the Contractor shall reimburse the Owner for any Supplemental or Additional Services of the Architect for additional site visits made necessary by the fault, neglect or request of the Contractor or caused by Contractor's failure to achieve the applicable Contract Time requirements.

§ 8.2.4.4 If one or more of the Liquidated Damages provisions set out in the Agreement are held to be legally unenforceable as a penalty (except when the holding is the result of a challenge by the Owner), the Owner shall be allowed to recover actual damages caused by the Contractor's failure to achieve the applicable Contract Time requirements.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by war, civil commotion, pandemic, epidemic, federal, state or local declared disaster or public emergency, act of God, governmental restrictions, regulations, orders, or interference, fire or other unavoidable casualty, material changes ordered in the Work; adverse weather conditions documented in accordance with Section 15.1.6 by delay authorized in writing by the Owner prior to the happening of the delay event; or (5) by other causes that the Contractor asserts, and the Architect and Owner determine, justify delay, then the Contract Time may be extended for such reasonable time as the Architect and Owner may determine based upon documentation by the Contractor.

§ 8.3.1.1 The adjustment of the Contract Time for delay, disruption, and interference described in this Section 8.3.1 is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Time and Contractor's timely delivery of the notice and claim as set out in this Section 8.3.1. An adjustment to the Contract Time shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this Section 8.3.1, and under no circumstances shall the Owner be liable to pay the Contractor any compensation for Owner-caused delays.

§ 8.3.1.2 **Notice and Claim for Extension.** In the event of a delay in the commencement or progress of the Work as a result of any of the circumstances in this Section 8.3.1, the Contractor may receive an extension of time for completion of the Work equal to the delay, if the Contractor delivers a written notice and claim to the Owner and Architect delivered in any manner provided in Section 1.6.1 of this Agreement. The Notice shall identify and provide a reasonably detailed description of the circumstances causing the delay, disruption, or interference to the Contractor's performance or progress of the Work on or before the due date of Contractor's Application for Payment covering the period in which the delay began. Claims for an extension of time shall be stated in whole or half calendar days, as applicable. The actual date on which the delay(s) began and/or the date the delay ended, if applicable, must be stated in the Claim Notices as applicable.

§ 8.3.2 In the case of claims for extension of time because of unusually inclement weather, such extension of time may be granted only if the Contractor files a claim in accordance with the requirements set out in Section 15.1.6.

§ 8.3.3 Contractor shall not be entitled to an adjustment in the Contract Time for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

§ 8.3.4 Any adjustment of the Contract Time authorized under Section 8.3 shall be conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Time and Contractor's submission of a timely and properly documented Notice and Claim for additional time in accordance with Section 8.3.

§ 8.3.5 Adjustments to the Contract Time addressed in this Section 8.3 shall apply only to requests for extensions of time based upon delay, disruption, or interference to the Contractor's performance or progress of the Work and shall have no applicability to requests for adjustment of the Contract Time due to other changes in circumstance, including but not limited to: a change in the materials used; a change in the specified manner of constructing and/or installing the Work; or additional labor, services or materials required, beyond those specified by the Contract Documents. Claims for an adjustment of the Contract Time resulting from these kinds of changes shall be authorized only pursuant to a written order or directive from Owner authorizing Contractor to proceed with a change in the Work in accordance with the Contract Documents.

§ 8.4 No Damages or Other Compensation for Delay or Acceleration

This Agreement does not permit recovery by the Contractor of damages or additional compensation for delay, acceleration, disruption, or interference to the Contractor's performance or progress of the Work Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time including but not limited to delay, disruption, or interference caused by the Owner the Architect, of an employee of either, or of a Separate Contractor, any of the circumstances set out in Section 8.3.1 or acceleration of the Work required by the Owner in accordance with the terms of this Agreement. Contractor's sole remedy for delay disruption, or interference in its performance or progress of the Work or any required acceleration of the Work shall be the grant of an extension of time for completion equal to a delay or such reasonable time as the Owner and Architect may determine in their sole discretion.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement or the Guaranteed Maximum Price Amendment in the case of a Construction Manager at Risk Contract and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. All costs of overtime Work required by the Contract Time and the nature of the Work, as set forth in or inferable from the Contract Documents, except costs of emergencies covered in Section 10.4, shall be and are included in the Contract. The Contract Sum shall not be increased because the Contractor experiences an unexpected or unforeseeable increase in the price of labor or materials required to complete the Project.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices may be equitably adjusted by written agreement between the Owner and Contractor, executed prior to an order being placed based on the unit prices.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, as applicable, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment or, in the case of a Guaranteed Maximum Price, concurrent with the Guaranteed Maximum Price Proposal, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The schedule of values shall be prepared in such a manner that each major item of work,

whether done by Contractor's own forces or subcontracted, is shown as a single line item on AIA Documents G702-1992 and G703-1992, Application and Certificate for Payment and Continuation Sheet.

§ 9.3 Applications for Payment

§ 9.3.1 In accordance with the requirements of Section 5.1 of the Agreement, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage withheld. The form of Application for Payment, duly notarized, shall be a current authorized edition of AIA Document G702-1992, Application and Certificate for Payment, supported by a current authorized edition of AIA Document G703-1992, Continuation Sheet.

§ 9.3.1.1 Such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor has not been invoiced by a Subcontractor or supplier, unless such Work was self-performed; in such case, only portions of Work actually performed shall be included on the Contractor's request for payment.

§ 9.3.1.3 Contractor agrees that, for purposes of Texas Government Code section 2251.042, receipt of the Application for Payment by the Architect shall not be construed as receipt of an invoice by the Owner. Contractor further agrees that Owner's receipt of the Architect's Certificate for Payment shall be construed as a receipt of an invoice by the Owner, for purposes of Texas Government Code section 2251.042.

§ 9.3.1.4 The Owner shall withhold retainage as provided in the Agreement, except that Owner shall not pay amounts for which the Architect refuses to certify payment, or the Owner refuses to pay, as provided herein. The retainage shall be paid to the Contractor with the Final Payment, subject to the requirements of the Contract Documents.

§ 9.3.2 Unless otherwise provided in a separate written agreement executed between the Owner and Contractor prior to delivery, payments shall not be made on account of materials and equipment delivered and stored at the site or off-site for subsequent incorporation in the Work. The Owner may, in Owner's sole discretion, require Contractor's compliance with such reasonable procedures and requirements as it may establish, as a condition precedent to the grant of Owner's consent and agreement to payment, including but not limited to the following:

- .1 provision of any additional insurance required to protect the materials and equipment while stored;
- .2 payment of the costs to store the materials and equipment and any additional transportation costs for multiple deliveries;
- .3 provision of written consent of Contractor's surety to such storage;
- .4 submission of an affidavit identifying materials and equipment stored off-site for later incorporation into the Work, and acknowledging responsibility for such materials and equipment;
- .5 provision of documentation that the facility where the materials and/or equipment will be stored is an adequately insured commercial warehouse, where the materials and equipment stored will be sheltered from the weather and outside elements and are stored in accordance with the manufacturer's instructions, including proper temperature and humidity controls and that the materials and equipment have been physically separated and marked for the Project;
- .6 its agreement to bear the cost of Owner and/or Architect's visits to the off-site storage facility to confirm compliance with these requirements and review the stored contents, and Contractor shall agree to allow such costs to be offset from Progress Payments;
- .7 agreement that payment of any costs related to compliance with the procedures and requirements for storage of materials and equipment on or off-site, shall not be subject to charges for overhead or profit;
- .8 submission of bills of sale or other documentation acceptable to the Owner, showing proof of delivery and establishing the Owner's title to the materials or equipment and/or otherwise protecting the Owner's interest, including naming the Owner as additional insured on the required insurance policy (naming the specific materials or equipment stored and their location) and providing proof of delivery for those materials and equipment;

- .9 agreeing that, in the event of termination of the Contract or default by the Contractor, the material and equipment stored on or off-site shall be immediately turned over to the Owner by delivery to the location designated by the Owner and that the operator of the storage facility is aware of this agreement and willing to honor it; and
- .10 agreeing that all such stored materials and equipment, to the extent they include mechanical components, will be maintained by the Contractor kept in good working condition and ready for immediate installation, to the same extent they would have been, had they been delivered "just in time" for installation, that Contractor will be solely responsible for assuring any manufacturer's warranty will commence on date of completion of installation and/or start-up of the material or equipment and for repairs required prior to installation to assure performance in accordance with the Contract Documents.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY A SUPPLIER, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS PREVIOUSLY MADE BY THE OWNER TO CONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.**

§ 9.3.4 In each Application for Payment, Contractor shall certify that: the information contained in the Application presented is true, correct, accurate and complete; that the submitted Work has been completed to the extent represented in the Applications for Payment; that the materials and supplies identified in the Applications for Payment have been purchased, paid for, and, unless an agreement described in Paragraph 9.3.2 has been signed, incorporated into the Work; that the subcontractors whose work is identified in the Applications for Payment have been paid, or Contractor has been invoiced for same and intends to pay such subcontractors; there are no known mechanics' or materialmen's liens outstanding at the date of the Application, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application and that except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmen's liens on the Work, and that releases from all contractors and materialmen have been obtained in such form as to constitute an effective release of lien under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, carefully evaluate and review the Application for Payment and, when appropriate, return the Application for Payment to the Contractor as provided in Section 9.4.2. If the Application for Payment is complete, then the Architect shall sign and, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner in writing, of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner in writing, of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. Architect's written reasons for withholding certification shall be construed as the notice required by Texas Government Code Section 2251.042 *et seq.*

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, that the Architect has observed the progress of the Work and determined that, in the Architect's professional opinion based on the Architect's evaluation of the Work and the data in the Application for Payment, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect in writing to the Owner. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data unless requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose

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the Contractor has used money previously paid on account of the Contract Sum. Examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's accountants or other representatives of the Owner acting in the sole interest of the Owner.

§ 9.4.3 The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents;
- .8 delay beyond the times set forth elsewhere in the Contract Documents including but not limited to the submission for approval of the schedule of values, cost breakdowns on proposal requests, progress schedule, list of Subcontractors and insurance requirements;
- .9 failure to submit a written plan indicating action by the Contractor to regain the time schedule for completion of Work within the Contract Time;
- .10 evidence of financial inability to perform the Contract fully;
- .11 failure to submit record documents required by the Contract; or
- .12 failure of the Contractor to perform any other obligations of the Contract.

§ 9.5.2 If the Contractor disputes the Architect's or the Owner's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, the Contractor may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment as provided for in Section 9.5.1.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment. Notwithstanding any provision contained within this Article, if the Contractor has not achieved Substantial Completion by the required date, subject to extensions of time allowed under the Contract Documents, then Architect may withhold any further Certificate for Payment to the extent necessary to preserve sufficient funds to complete construction of the Project and to cover liquidated damages. The Owner shall not be deemed in default by reason of withholding payment as provided for in Section 9.5.1, or this Section 9.5.4.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued and the Owner has approved a Certificate for Payment, the Owner shall make payment of disputed amounts in the manner and within the time provided in the Contract Documents, and in

accordance with the Texas Government Code section 2251.042 *et. seq.*, Owner shall within twenty-one (21) days notify the Architect and Contractor if Owner disputes the Architect's Certificate for Payment, listing the specific reasons for nonpayment. Payments to the Contractor shall not be construed as releasing the Contractor or his Surety from any obligations under the Contract Documents.

§ 9.6.2 In compliance with Texas Government Code Section 2251.022, the Contractor shall, within ten (10) days following receipt of payment from the Owner, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnished and equipping of the improvements and the performance of the Work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract. Contractor shall include a provision in each of its contracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor in part or in whole to the extent necessary to protect the Owner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 The Contractor shall, as a condition precedent to any obligation of the Owner under the Contract Documents, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253. Notwithstanding the foregoing, payments received by the Contractor from the Owner for Work properly performed by Subcontractors, or materials properly provided by suppliers, shall be held in trust by the Contractor for the benefit of those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

Pursuant to Texas Government Code Section 2251.051, if the Owner does not pay the Contractor any payment certified by the Architect, which is undisputed, due and owing after the date the payment is due under the Contract Documents, then the Contractor may, upon ten (10) days' written notice to the Owner and Architect, that payment has not been made and the Contractor intends to suspend performance for nonpayment, may stop the Work until payment of the undisputed amount owing has been received. If the Owner provides written notice to the Contractor that: 1) payment has been made; or 2) a bona fide dispute for payment exists, listing the specific reasons for nonpayment, then Contractor shall be liable for damages resulting from suspension of the Work. If a reason specified is that labor, services, or materials provided by the Contractor are not provided in compliance with the Contract Documents, then the Contractor shall be provided a reasonable opportunity to cure the noncompliance or to compensate Owner for any failure to cure the noncompliance. No amount shall be added to the Contract Sum as a result of a dispute between Owner and Contractor unless and until such dispute is resolved in Contractor's favor.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, then such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due to Owner, pursuant to the Contract, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, then the Owner shall have an absolute right to offset such amount against the Contract Sum and, in the Owner's sole discretion and without waiving any other remedies, may elect to either: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due to Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use; provided, however, as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same cannot be delivered for reasons not the fault or responsibility of the Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed.) Without limiting the foregoing, in general, the only remaining Work following Substantial Completion shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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

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

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

§ 9.8.4 When the Work or designated portion thereof is Substantially Complete, as defined by the Contract Documents, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof, unless otherwise provided in the Certificate of Substantial Completion. If Work is to be completed or corrected after the date of Substantial Completion and prior to final payment, Warranties for Work to be completed or corrected after the date of Substantial Completion and prior to

final payment shall become effective on the later of the date the Work is completed or corrected and accepted by the Owner and Architect, or the date of Final Payment. ("Warranty Commencement Date").

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

§ 9.8.6 Retainage is not due to the Contractor until thirty-one (31) days after Final Completion of the Work as set out in Section 9.10. After the Certificate of Substantial Completion is accepted by the Owner, the Owner may, in its sole discretion and upon acceptance and consent of surety, make payment of retainage on all or a part of the Work accepted.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to in writing by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work resulting from such occupancy, use or installation, and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties on the partially completed portion of the Work, as required by the Contract Documents.. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect. Contractor agrees that the Owner may place and install as much equipment and furnishings as is possible before completion or partial completion of portions of the Work.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless expressly agreed upon in writing, partial occupancy or use of a portion or portions of the Work or installation of furnishings and equipment shall not constitute acceptance of Work not complying with the requirements of the Contract Documents, nor shall it constitute evidence of Substantial Completion or Final Completion.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 When all of the Work is finally completed and the Contractor is ready for a final inspection it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect and Owner (at Owner's option) will make final inspection of the Work and, if the Work is complete in full accordance with the Contract Documents and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Work has been completed in accordance with the Contract Documents and that remainder of the Contract Sum, including all retainage, less any amount withheld pursuant to the Contract and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Except with the consent of the Owner, the Architect will perform no more than one (1) inspection to determine whether the Work has attained Final Completion in accordance with the Contract Documents. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) its affidavit that payrolls, bills for materials and equipment, and other liabilities connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) except for amounts previously withheld by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may have

been fully paid or otherwise satisfied; releases and waivers of liens from all Subcontractors of the Contractor and of any and all other parties required by the Architect or the Owner; such other provisions as Owner may request; and consent of Surety to final payment. If any third party fails or refuses to provide a release of claims or waiver of lien as required by Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability; (7) In addition, the following items must be completed and received by the Owner before Final Payment will be due:

- .1 Written certifications required by Sections 10.5, 10.6, and 10.7 herein;
- .2 Final list of subcontractors (AIA Document G705-2001);
- .3 Contractor's Certification of Project Compliance required by 16 Texas Administrative Code, Section 61.1036, located at: <https://tea.texas.gov>;
- .4 Contractor's warranties, organized as required elsewhere in the Contract Documents;
- .5 Maintenance and Instruction Manuals;
- .6 Owner's Certificate of Final Completion; and
- .7 "As-constructed record drawings". At the completion of the Project, the Contractor shall submit one complete set of "as-constructed" record drawings, with all changes made during construction, including concealed mechanical, electrical, and plumbing items. The Contractor shall submit these as electronic, sepiia, or other acceptable medium, in the discretion of the Owner. The "as-constructed" record drawings shall delete the seal of the Architect and/or the Engineer and any reference to those firms providing professional services to the Owner, except for historical or reference purposes.

Documents identified as affidavits must be notarized. All manuals will contain an index listing the information submitted. The index section will be divided and identified by tabbing each section as listed in the index. Upon request, the Architect will furnish the Contractor with blank copies of the forms listed above.

§ 9.10.3 The Owner shall make final payment of all sums due the Contractor not more than thirty-one (31) days after the Architect's execution of a final Certificate for Payment. Final Payment shall not constitute a waiver of any Claims by the Owner.

§ 9.10.4

(Paragraphs deleted)

[Paragraph Deleted.]

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously asserted pursuant to Article 15 and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 The Contractor shall not permit any actual or purported lien, charge or claim to attach or attempt to attach to the Work, the site or any amounts due or to become due to the Contractor under the Contract Documents. If any such lien, charge or claim is so asserted, the Contractor shall promptly procure its release and indemnify the Owner against all damage and expense incident thereto. Upon completion of the Work and before any final payment and settlement, the Contractor shall provide evidence satisfactory to the Owner of payment and release of all debts, taxes, liens, charges, obligations and claims for or relating to labor, materials, Subcontractors and Sub-subcontractors; provided, however, that if the Contractor has not paid for any of the aforesaid as a result of a bona fide dispute, and payment of such is guaranteed and covered by the payment bond provided by the Contractor, then the Contractor shall not be required to pay such claim as a condition to final payment and settlement, but instead shall be required to provide Owner with written consent to final payment executed by such surety, expressly acknowledging the existence of such unpaid claim, and agreeing that full and final payment to the Contractor shall not impair any of the Owner's rights or the surety's obligations under the bond.

§ 9.11 Audit

Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same.

§ 9.12 In addition to any liquidated damages payable to the Owner by the Contractor, if: (1) the Architect is required to make more than one (1) inspection for Substantial Completion; (2) the Architect is required to make more than 1 inspection for Final Completion; or (3) the Work is not substantially complete within thirty (30) days after the date established for Substantial Completion in the Contract Documents; the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections or services.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract and shall conform to all provisions of the "Manual of Accident Prevention in Construction", published by the Associated General Contractors of America, Inc., latest edition, and the Contractor further agrees to fully comply with all safety standards required by the Occupational Safety and Health Administration ("OSHA") 29 USC Section 651 et seq., and all amendments thereto. However, the Contractor's duties herein shall not relieve any Subcontractor or any other person or entity, including any person or entity required to comply with all applicable federal, state and local laws, rules, regulations, and ordinances, from the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

§ 10.1.1 Contractor shall ensure that the Project site is alcohol-free, drug-free, nicotine/ tobacco-free, e-cigarette free, weapon-free, and sexual-harassment free, and shall require strict compliance on the Project Site with the Owner's Board Policies, including but not limited to GKA(Legal) and GKA(Local). Contractor will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies as a result of a for-cause test, conducted immediately following removal that said employee was in compliance with this contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

10.1.2 Dress Code, Fraternalization and Sexual Harassment. Contractor shall require adequate dress of the Contractor's forces consistent with the nature of the Work being performed, including wearing shirts at all times. Contractor shall prohibit fraternization between all persons working under Contractor or any of its subcontractors, students and Owner's employees while on Owner's property. Sexual harassment of employees of the Contractor or employees or students of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job site.

§ 10.1.3 Weapons. Owner has also banned use, possession, or display of any firearm, handgun, location-restricted knife, club, or "prohibited weapon", as defined by the Texas Penal Code and Owner's Board Policy FNCG(Legal), except when the Contractor, its representatives, employees, agents, and subcontractors, or anyone else over which the Contractor has control or authority holds a Texas handgun license, stores the handgun or other firearm in a locked vehicle in the Owners parking lot, garage, or other parking area provided by the Owner AND the firearm is not loaded and not in plain view. A copy of such policy is available through a link on the Owner's website. The Contractor further agrees that Contractor's representatives, employees, agents, and subcontractors will abide by these requirements as well as the Federal Gun-Free School Zones Act.

§ 10.1.4 Tobacco and E-Cigarettes. Contractor's employees, agents, Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, shall not use e-cigarettes or tobacco products while on the Project Site.

§ 10.1.4 Small Unmanned Aircraft (Drones). The Contractor shall operate any Small Unmanned Aircraft as required by 14 C.F.R. Part 107. as applicable, and any other applicable federal or state laws and regulations.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall maintain good order among its employees and its Subcontractors, shall confine its employees and Subcontractors to such work areas, roads and gates as directed by the Owner, take reasonable and necessary precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work, school personnel, students and other persons on the Owner's premises and other persons who may be affected thereby, which protection shall include the installation of fencing between the Work site and the occupied portion of a connecting or adjacent educational facility, and taking reasonable precautions to secure any abusable glue, aerosol paint, or any other chemical substance for inhalation being used on the project site;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as fences, trees, shrubs, lawns, walks, athletic fields and tracks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction. Contractor's obligations under this Section shall continue to apply during any time period when all or a portion of the Work is suspended for any reason. Contractor's obligations under Section 10.2 as to each portion of the Project shall continue until Owner takes possession of and occupies that portion of the Project.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including installing fencing, posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

§ 10.2.4 When use or storage of hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel, and shall only conduct such activities after giving reasonable advance written notice of the presence or use of such materials, equipment or methods to Owner and Architect. The storage of explosives on Owner's property is prohibited. The use of explosive materials on Owner's property is prohibited unless expressly approved in advance in writing by Owner and Architect.

§ 10.2.5 [Paragraph Deleted.]

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

§ 10.2.8.1 If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 3 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. No provision of the Contract Documents shall waive Owner's immunity under the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101.

§ 10.2.8.2 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work which cause death, bodily injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious bodily injuries, or serious property damages are caused, then the accident shall be reported immediately by any means necessary to give actual notice to the Owner's representative and the Architect.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. If such notice is provided orally, written confirmation of such notice by Contractor shall be provided not later than one (1) business day following such notification. Owner shall not be responsible for materials or substances brought to the site by the Contractor.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall, as soon as reasonably possible, obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. Contractor may be entitled to an extension of the Contract Time in accordance with Article 8.3.

§ 10.3.3 To the extent permitted by the laws and Constitution of the State of Texas, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. Notwithstanding anything to the contrary contained in this Section 10.3.3, the agreement of the Owner to indemnify, defend and hold harmless the parties described in this Section shall not extend or apply to claims, damages, losses, expenses or liabilities related to, created or caused in whole or in part by a party indemnified hereunder; it being agreed and understood that the Owner and any party so indemnified shall each bear liability for its own negligent acts or omissions, and that such indemnity shall extend only to liability for the negligent acts and omissions of the Owner.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents.

§ 10.3.5 Except to the extent that the cost and expense are due to the Owner's fault or negligence, if Contractor imports hazardous materials onto the Project site, the Contractor shall indemnify and hold harmless the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, (2) where the Contractor fails to perform its obligations under Section 10.3.1; and (3) any fines or penalties of government agencies directly resulting from the Contractor's importation of the hazardous materials onto the Project site.

§ 10.3.6 [Paragraph Deleted.]

§ 10.4 Emergencies

§ 10.4 .1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor’s discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

§ 10.4.2 The performance of the foregoing services by the Contractor shall not relieve the subcontractors of their responsibility for the safety of persons and property and for compliance with all federal, state and local statutes, rules, regulations and orders of any governmental authority applicable to the conduct of the Work.

§ 10.5 Asbestos Or Asbestos-Containing Materials. Contractor shall submit to the Architect a written certification addressed to the Owner that all materials used in the construction of this Project contain less than 0.10% by weight of asbestos and for which it can be demonstrated that, under reasonably foreseeable job site conditions, will not release asbestos fibers in excess of 0.1 fibers per cubic centimeter. The written certification shall further state that, should asbestos fibers be found at this Project in concentrations greater than 0.1 fibers per cubic centimeter, then Contractor shall be responsible for determining which materials contain asbestos fibers and shall take all necessary corrective action to remove those materials from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor. Final Payment shall not be made until this written certification has been received.

§ 10.6 Lead-Free Material In Potable Water System

§ 10.6.1 Prior to payment of retainage and final payment, the Contractor and each subcontractor involved with the potable water system shall furnish a written certification that the potable water system is "lead-free".

§ 10.6.2 The written certification shall further state that should lead be found in the potable water system built under this Project, then Contractor shall be responsible for determining which materials contain lead and shall take all necessary corrective action to remove lead from the Project, at no additional cost to the Owner. The written certification shall be dated, shall reference this specific Project and shall be signed by not less than two (2) officers of the Contractor.

§ 10.7 Hazardous Materials Certification

The Contractor shall provide written certification that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the Section in the Project Manual related to Contract Closeout.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor’s Insurance

§ 11.1.1 The Contractor and the Contractor’s Subcontractors shall purchase and maintain in force, insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the table below the Agreement or elsewhere in the Contract Documents. No Work will be commenced, and no equipment or materials may be shipped, until all requirements of Article 11 have been satisfied, satisfactory evidence of insurance has been provided, and all required insurance is in full force and effect. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Texas.

Workmen’s Compensation: (Including Waiver of Subrogation Endorsement)	All liability arising out of Contractor’s employment of workers and anyone for whom Contractor shall be liable for Worker’s Compensation claims. Worker’s Compensation is required and no "alternative" form of insurance shall be permitted.
Employer’s Liability:	\$1,000,000.00

Commercial General Liability: Each Occurrence General Aggregate Personal & Advertising Injury Products and Completed Operations	\$1,000,000.00 \$2,000,000.00 (A Designated Construction Project General Aggregate Limit shall be provided) \$1,000,000.00 each person \$1,000,000.00 (for one (1) year, commencing with issuance of final Certificate for Payment)
Property Damage Independent Contractors Contractual Liability	\$1,000,000.00 each occurrence \$2,000,000.00 aggregate (Same limits as above) (Same limits as above)
Automobile Liability: Bodily Injury/Property Damage	\$1,000,000.00 combined single limit \$1,000,000.00 each occurrence
Umbrella or Excess Liability	\$5,000,000.00 each occurrence/aggregate
All Risk Builders Risk against the perils of fire, lightning, windstorm, hurricane, hail, explosion, riot, civil commotion, smoke, aircraft, land vehicles, vandalism, malicious mischief, and all other perils in the amount one hundred percent (100%) of the value of the improvements including transit and materials stored off site. Additionally, this coverage shall provide protection to the full replacement value for boiler and machinery equipment up to installation, during testing, and until acceptance by Owner.	
Professional Liability for Construction Manager-At-Risk. In addition to the coverage and limits provided above, if these General Conditions are incorporated into the AIA Document A133™–2019 Standard Form of Agreement Between Owner and Construction Manager as Constructor <i>where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price</i> , the Construction Manager shall also provide Professional Liability Insurance covering negligent acts, errors and omissions in the performance of professional services during the pre-construction phase, with policy limits of not less than One Million Dollars (\$\$1,000,000.00) per claim and Two Million Dollars (\$\$2,000,000.00) in the aggregate.	

§ 11.1.2 The required insurance must be written by a company licensed to do business in Texas at the time the policy is issued. In addition, the company must be acceptable to the Owner.

§ 11.1.3 The General Liability and Automobile policies so issued in the name of Contractor shall also name the Owner as additional insured. The coverage afforded to the additional insured under the policy or policies shall be primary insurance. It is the intent of the parties to this Agreement that the General Liability coverage (and associated Umbrella Coverage) required herein shall be primary to and shall seek no contribution from all insurance available to Owner, with Owner’s insurance being excess, secondary and non-contributing. The Commercial General Liability coverage provided by Contractor shall be endorsed to provide such primary and non-contributing liability. If the additional insured has other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis.

§ 11.1.4 If the insurance is written with stipulated amounts deductible under the terms of the policy, the Contractor shall pay the difference attributable to deductions in any payment made by the insurance carrier on claims paid by this insurance. If the Owner is damaged by the failure of the Contractor to maintain such insurance and to so notify the Owner then the Contractor shall bear all reasonable costs properly attributable thereto.

§ 11.1.5 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor’s completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. Nothing contained herein shall limit or waive Contractor’s legal or contractual responsibilities to Owner or others.

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§ 11.1.6 Contractor shall have its insurance carrier(s) furnish to Owner insurance certificates in form satisfactory to Owner specifying the types and amounts of coverage in effect, the expiration dates of each policy, and a statement that no insurance will be canceled or materially changed while the Work is in progress without thirty (30) calendar day's prior written notice to Owner. Contractor shall permit Owner to examine the insurance policies, or at Owner's option, Contractor shall furnish Owner with copies, certified by the carrier(s), of insurance policies required in Section 11.1.1. If Contractor neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, but shall not be obligated to, procure such insurance and the provisions of Section 11.1.8 hereof shall apply.

§ 11.1.7 Contractor and its Subcontractors shall not commence the shipment of equipment or materials or commence the Work at the site until all of the insurance coverage required of Contractor and its Subcontractors are in force and the necessary certificates and statements pursuant to Section 11.1.6 hereof have been received by Owner and the Architect has issued a written notice to proceed.

§ 11.1.8 As an alternative and at Owner's option and expense, Owner may elect to furnish or to arrange for any part or all of the insurance required by Section 11.1 hereof. If Owner so elects, it shall notify, in writing, Contractor and issue a Change Order therefor, but no adjustment to the scheduled completion date or the Contract Sum shall be allowed.

§ 11.1.9 Workers' Compensation Insurance Coverage.

.1 Definitions:

.1.1 Certificate of coverage ("Certificate"). A copy of a certificate of insurance, a certificate of authority to self-insure issued by the division, or a coverage agreement (DWC Form-81, DWC Form-82, DWC Form-83, or DWC Form-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.

.1.2 Duration of the Project. Includes the time from the beginning of the work on the Project until the Contractor's work on the Project has been completed and accepted by the Owner.

.1.3 Persons providing services on the Project ("subcontractor" in Texas Labor Code §406.096). Includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracts directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

.2 The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the Project, for the duration of the Project.

.3 The Contractor must provide a certificate of coverage to the Owner prior to being awarded the contract.

.4 If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

.5 The Contractor shall obtain from each person providing Services on a Project, and provide to the Owner:

.5.1 a certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

.5.2 no later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.

.6 The Contractor shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.

.7 The Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

- .8 The Contractor shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- .9 The Contractor shall contractually require each person with whom it contracts to provide services on a Project, to:
 - .9.1 provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
 - .9.2 provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
 - .9.3 provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - .9.4 obtain from each other person with whom it contracts, and provide to the Contractor:
 - (a) a certificate of coverage, prior to the other person beginning work on the Project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - .9.5 retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;
 - .9.6 notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
 - .9.7 contractually require each person with whom it contracts, to perform as required by Subparagraphs .9.1 - .9.7 with the certificates of coverage to be provided to the person for whom they are providing services.
- .10 By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Texas Department of Insurance, Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- .11 The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the Owner. [28 TAC §110.110(c)(7)]

§ 11.1.10 The Owner and Contractor shall waive all rights against (1) each other and the Contractors, Subcontractors, agents and employees each of the other, and (2) the Architect and separate Contractors, if any, and their contractors, Subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance applicable to the Work. The foregoing waiver afforded the Architect, his agents and employees shall not extend to the liability imposed by Section 3.18.3. The Owner or the Contractor, as appropriate, shall require of the Architect, separate contractors, contractors and Subcontractors by appropriate agreements, written where legally required for validity, similar waivers, each in favor of all other parties enumerated in this Section 11.1.10.

§ 11.2 Owner's Insurance [Paragraph Deleted.]

(Paragraphs deleted)

§ 11.3 Waivers of Subrogation [Paragraph Deleted.]

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the

Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

(Paragraphs deleted)

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor is required, as a condition precedent to the execution of the Contract, to execute a PERFORMANCE BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the Contract Sum.

§ 11.4.2 The Contractor is required, as a condition precedent to the execution of the Contract, to execute a PAYMENT BOND in the form required by TEXAS STATUTES, in an amount equal to ONE HUNDRED PERCENT (100%) of the Contract Sum as security for payment of all persons performing labor and furnishing materials in connection with this Contract. (Bonding Company is to furnish such forms). All bonds shall name the Owner as additional obligee.

§ 11.4.3 The Payment and Performance Bond shall meet requirements of Chapter 2253 of the Texas Governmental Code. All bonds shall be issued by a surety company licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance. The surety company may be required by the Owner to have a rating of not less than "B" in the latest edition of Best's Insurance Reports, Property-Casualty. The surety company shall provide, if requested, information on bonding capacity, other projects under coverage and shall provide proof to establish adequate financial capacity for this Project. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by an reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus.

§ 11.4.4 The Sureties shall promptly file a signed copy of the Contract, Performance Bond, and Payment Bond with the Owner in full compliance with Chapter 2253 of the Texas Governmental Code or, in the case of a Construction Manager, as required by Section 14.3.3 of the AIA Document A133-2019.

§ 11.4.5 All bonds will be reviewed by the Architect for compliance with the Contract Documents prior to execution of the contract. In the event that the Architect has any questions concerning the sufficiency of the bonds, the bonds will be referred to the Owner or the Owner's representative for review and decision.

§ 11.4.6 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the Power-of-Attorney. The name, address, and telephone number of a contact person for the bonding company shall be provided.

§ 11.4.7 Upon the request in writing of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ 11.4.8 Bonds shall be signed by an agent resident in the State of Texas and the date of the bond shall be the date of execution of the contract. If at any time during the continuance of the contract, the surety of the Contractor's bonds becomes insufficient, Owner shall have the right to require additional and sufficient sureties which the Contractor shall furnish to the satisfaction of the Owner within ten (10) business days after notice to do so. In default thereof, the Contractor may be suspended, and all payment or money due to the Contractor withheld.

§ 11.4.9 By inclusion of this Section 11.4.8 in the Contract Documents, the surety which issues the bonds is hereby notified that the Owner, the Architect, and their agents and employees do not represent and will not be responsible for the surety's interests during the course of the Work. To protect its interests, the surety shall have the right to attend pay estimate meetings, review Applications for Payment when requested in writing by them, comment upon and make

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recommendations regarding payments, and inspect the Work in the presence of the Contractor and the Architect. By providing the bonds for the Work, the surety shall and hereby waives any cause of action against the Owner, the Architect, their agents and employees, for any loss suffered by the surety by reason of overpayment of any amounts to the Contractor, unless such is a direct result of a fraudulent or grossly negligent act committed by such party.

§11.5 Adjustment and Settlement of Insured Loss [Paragraph Deleted.]

(Paragraphs deleted)

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered prior to inspection, contrary to the Architect's request or to requirements specifically expressed in the Contract Documents or if any known deficiencies exist, it must, if requested by the Architect, be uncovered by the Contractor for the Architect's examination and be replaced at the Contractor's sole expense without change in the Contract Time. If the uncovered work is determined by the Architect upon inspection to be deficient or not in accordance with the Contract Documents, the uncovered Work which is deficient or not in accordance with the Contract Documents shall be corrected and covered at the Contractor's sole expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense. If the Architect requests inspection of the Work prior to covering or including a requirement for inspection in the Contract Documents is within the Architect's standard of care and the Architect has failed to timely make such request or include the requirement in the Contract Documents, the Architect shall reimburse the Owner for the actual costs of uncovering and recovering such Work and additional costs of correction, if any, caused by covering the Work prior to inspection.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense and will be subject to offset by the Owner at Final Payment.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Owner shall give such notice of the condition to the Contractor with reasonable promptness after discovery of the condition. The Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition in its non-conforming state. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor based on a breach of the warranty contained in this Section 12.2.2.1 providing for correction of Work during the one-year period. If the Contractor fails to correct nonconforming Work within a reasonable time during the period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.2.4 Upon request by the Owner and prior to the expiration of one (1) year from the date of Substantial Completion, the Architect will conduct and the Contractor shall attend a meeting with the Owner to review the facility operations and performance.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 Contractor shall (i) re-execute any parts of the Work that fail to conform with the requirements of this Agreement that appear during the progress of the Work; (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from Substantial Completion of the Work hereunder, or within such longer period of time as may be set forth in the Drawings and Specifications or other Contract Documents; and (iii) replace, repair, or restore any parts of the Project or furniture, fixtures, equipment, or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Contract Documents or defects in the Work or by the negligent act of the Contractor or its employees, agents or subcontractors. The cost to Contractor of performing any of its obligations under this Section 12.2.6 to the extent not covered by insurance shall be borne by Contractor.

§ 12.2.7 The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provisions of this Section 12.2.7 shall not apply to corrective Work attributable solely to the acts or omissions of any separate Contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by Contractor.

§ 12.2.8 If, however, Owner and Contractor deem it inexpedient to require the correction of Work damaged or not done in accordance with the Contract Documents, an equitable deduction from the Contract Sum shall be made by written agreement between Contractor and Owner. Until such settlement, Owner may withhold such sums as Owner deems just and reasonable from moneys, if any, due Contractor. The settlement shall not be unreasonably delayed by the Owner and the amount of money withheld shall be based on estimated actual cost to the Owner of the correction.

§ 12.2.9 Contractor's express warranties set out in this Article 12 shall be in addition to, and not in lieu of, any other warranties or remedies Owner may have under the Contract Documents, at law, or in equity for defective Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the laws of the State of Texas without regard to choice-of-law rules of any jurisdiction. The Contract is deemed performable entirely in the County in which the Project is located. Any litigation to enforce or interpret any terms of the Contract, or any other litigation arising out of or as a result of the Contract, shall be brought in the State courts of Hidalgo County. No provision of this Agreement shall waive any immunity or defense.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract in whole or in part without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender or other entity providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.2.3 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability, or effect of the remainder of the Contract Documents.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made at appropriate times as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities having jurisdiction. Except for tests, inspections and approvals required to be provided by the Contractor in the Contract Documents, the Owner will contract for, independently of the Contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for the acceptance of the Work by the Owner. The Contractor shall give timely notice to the persons or entities selected by the Owner of the need for such services. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense. Architect, Owner and Contractor shall cooperate for the timely scheduling of such tests and inspections.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including but not limited to those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Undisputed payments due and unpaid under the Contract Documents shall bear interest in accordance with the Texas Prompt Payment Act, Texas Gov't Code Chapter 2251. Any such payment shall be deemed overdue on the thirty-first (31st) day after Owner receives the Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets more than once per month. Any such payment shall be deemed overdue on the forty-sixth (46th) day after Owner receives the Contractor's Certificate for Payment from the Architect, if Owner's Board of Trustees meets once a month or less frequently. No interest shall be due on sums properly retained by Owner, except as provided by law, or on disputed sums unpaid by Owner.

§ 13.6 Equal Opportunity In Employment

§ 13.6.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, disability, sex, national origin, or any class otherwise protected by District policy or law. The Contractor agrees to post in conspicuous places, available to employees and applicants, notices setting forth the Contractor's nondiscrimination policies.

§ 13.6.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, age, disability, sex, national origin, or any class otherwise protected by District policy or law.

§ 13.7 Contractors Records

§ 13.7.1 Contractor agrees to furnish Owner such information as may be available in Contractor's files and records for the Project for the purpose of aiding Owner in establishing a depreciation schedule for the Project or such portions thereof as Owner may determine.

§ 13.7.2 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, contracts, purchase orders, vouchers, memoranda, other financial data and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least twelve (12) years after the date of Final Completion of the Project. Within ten (10) days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, Architect or their respective representatives, at Owner's central office or the principal offices of the Contractor, at the sole option of the Owner.

§ 13.7.3 For all Change Orders, Allowances and expenditures from Contingency Funds, Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: contract files, including proposals of successful and unsuccessful bidders, bid recaps and contractor payments; original estimates; estimating Work sheets; general ledger entries detail cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner to substantiate charges related to the Contract.

§ 13.7.4 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner and shall be subject to the provisions of Section 13.7.1.

§ 13.7.5 Contractor shall keep all Construction Documents related to the Project, provided, however, Contractor shall not destroy said documents until Contractor has confirmed with Owner in writing that Owner has obtained a copy of all as-built drawings.

§ 13.7.6 In the event that an audit by the Owner reveals any errors/overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayment within thirty (30) days of such audit findings, or the Owner, as its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

§ 13.8 No Third-Party Beneficiaries

There are no third-party beneficiaries to this agreement.

§ 13.9 Proprietary Interests And Confidential Information

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§ 13.9.1 Neither Architect nor Contractor shall use the image or likeness of Owner's Project or Owner's official logo or emblem and any other trademark, service mark, or copyrighted or otherwise protected information of Owner, without Owner's prior written consent. Contractor and Architect shall not have any authority to advertise or claim that Owner endorses Architect or Contractor's services, without Owner's prior written consent.

§ 13.9.2 Neither Architect nor Contractor shall disclose any confidential information of Owner which comes into the possession of Architect or Contractor at any time during the Project, including but not limited to: pending real estate purchases, exchange, lease, or value; information related to litigation; detailed layouts of the Owner's Facilities; the location and deployment of security devices; security access codes; student likenesses; student record information; employee information; or any other information deemed confidential by law.

§ 13.9.3 The parties acknowledge that, as a public entity in the State of Texas, Owner is subject to, and must comply with, the provisions of the Texas Public Information Act, Texas Government Code Section 552.001, *et seq.*, and the Texas Open Meetings Act, Texas Government Code, Section 551.001, *et seq.*

§ 13.10 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Contract Documents.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 If the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor for any of the reasons set forth below, the Contractor may terminate the Contract upon twenty (20) days written notice to Owner and Architect if the Work is not allowed to commence within such period. The sole grounds for termination under this Subsection 14.1.1 are as follows:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Owner has not made payment of undisputed sums due on an approved Certificate for Payment within the time stated in the Contract Documents; or
- .4 [Subsection Deleted.]

§ 14.1.2 If through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less, the Contractor may terminate the Contract so long as Contractor has provided Owner and Architect with written notice of its intent to terminate in the event of additional delays of not less than twenty (20) days and has furnished written notice of termination to Owner and Architect no less than seven (7) days prior to the effective date of termination.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment in an amount which would have been recoverable had the termination been for the Owner's convenience.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon ten (10) additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

- .2 fails to make payment to Subcontractors or suppliers for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 fails to proceed continuously and diligently with the construction and completion of the Work; except as permitted under the Contract Documents; .5 fails to furnish the Owner, upon written request, with assurances satisfactory to the Owner, evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .6 engages in or permits serious or repeated worker misconduct in violation of Article 3.3;
- .7 engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the laws prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or
- .8 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, subject to any prior rights of the surety, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient.

In any such event, title to the Work and any products thereof, whether completed or partially completed, as well as all materials prepared, procured or set aside by the Contractor for use in the Work, shall vest in the Owner at the Owner's option, and the Owner may enter the Contractor's premises and remove the same therefrom. No election hereunder shall be construed as a waiver of any rights or remedies of the Owner with regard to any breach of the Contract Documents.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. Any further payment shall be limited to amounts actually earned to the date of termination.

§ 14.2.4 If the costs of finishing the Work, including compensation for the Architects' services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, exceed the unpaid balance of the Contract Sum or Guaranteed Maximum Price (if the Project is a Construction Manager at Risk project), then the Contractor and/or its Surety shall pay the difference to the Owner. The amount to be paid to the Owner shall be certified by Architect upon application. The obligation for payment shall survive termination of the Contract.

§ 14.2.5 The parties hereby agree that: 1) if an order for relief is entered on behalf of the Contractor, pursuant to Chapter 11 of the U.S. Bankruptcy Code; 2) if any other similar order is entered under any debtor relief laws; 3) if Contractor makes an assignment for the benefit of one or more of its creditors; 4) if a receiver is appointed for the benefit of its creditors; or 5) if a receiver is appointed on account of its insolvency, any such event could impair or frustrate Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract and to the accompanying rights set forth in Subparagraphs 14.2.1 through 14.2.6. In all events, pending receipt of adequate assurance of performance and actual performance in accordance with the Contract Documents, Owner shall be entitled to proceed with the Work with Owner's own forces or with other Contractors on a time and material or other appropriate basis, the cost of which will be charged against the Contract Sum.

§ 14.2.6 As required by Texas Government Code Chapter 2253, if a Performance Bond has been furnished and the Contractor is declared by the Owner to be in default under the Contract, then the Surety shall promptly perform the Work, in full accordance with the plans, specifications and Contract Documents. Unless otherwise agreed in writing between the Surety and the Owner, the Surety shall complete the Work by the Surety entering into a Contract acceptable to Owner, with a Contractor acceptable to Owner, and shall obtain new Payment and Performance Bonds as required by law.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time may be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Furthermore, if this Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, then the Owner's Board of Trustees has the right to not appropriate adequate monies for the next fiscal year and to terminate this Contract at the end of each fiscal year during the term of the Contract, without the Owner incurring any further liability to Contractor as a result of such termination.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed, for profit only on that portion of the Work executed, and reasonable costs of demobilization.

§ 14.4.4 Upon determination by a Court of competent jurisdiction that termination of the Contractor pursuant to Section 14.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in this Section 14.4.3.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims [Paragraph Deleted.]

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by the Contractor, shall be initiated by notice to the Owner and to the Architect, Claims under this Section 15.1.3.1 shall be initiated within 21 calendar days after the occurrence of the event giving rise to such Claim or within 21 calendar days after the claimant first knew or should have known of the condition giving rise to the Claim, whichever is earlier. If the full impact cannot be assessed as of the date of the Notice, then Notice shall be provided and amended by a second notice at the earliest date that is reasonably possible, but in no event later than the date of Contractor's Application for Payment covering the period in which the impact can be assessed and quantified.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required. If Texas Government Code, Chapter 2272 is applicable to the Claim, the Owner shall comply with the requirements set out therein as a condition precedent to any initiation of any litigation.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make undisputed payments for Work performed in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum (or Guaranteed Maximum Price, as applicable), if permitted, and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of the Contractor to proceed in accordance with this Article 15.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum (provided such a claim is specifically permitted by the Contract Documents), notice as provided in Section 15.1.3 shall be given to the Owner and Architect before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Architect will promptly investigate such Claim and report findings and a recommended resolution in writing to the Owner and Contractor. If the Claim is approved by Owner, then Contractor shall proceed with the execution of the Work that is the subject matter of the Claim. If the Claim is rejected by the Owner, then Contractor may pursue alternative dispute resolution as provided for in the Contract Documents.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. § 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions occurred at the locality of the Work which were abnormal for the period of time, were in excess of that normally experienced at the job site, could not have been reasonably anticipated, and prevented the execution of Work on scheduled Working Days. The term "Adverse Weather Conditions" as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality of the Work and/or the season or seasons of the year. Normal weather conditions shall be determined based upon information compiled from the Local Climatological Data maintained by NOAA's National Centers for Environmental Information [formerly the National Climatic Data Center (NCDC)] from the station closest to the location of the Work. No day will be counted as a rain-day when substantial Contractor forces are able to perform Work on the Project for more than fifty percent (50%) of the usual workday or when the stage of the Work on the Project is not adversely impacted. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Price by reason of such delays or disruptions. Requests for an extension of the Contract Time pursuant to this Subparagraph shall be submitted to the Architect not later than the fifteenth (15th) day of the month following the month during which the delays or disruptions occurred, but shall be applied only to the extent that Substantial Completion of the Project exceeds the Substantial Completion date established for the Work. As provided herein, Contractor shall only be entitled an extension of the Contract Time per the terms of the Contract Documents and no damages shall be paid for delays.

(Paragraphs deleted)

§ 15.1.7 Calculating Claims For Damages

Except as otherwise provided in this Agreement, in calculating the amount of any Claim recoverable by the Contractor, the following standards will apply:

- .1 No indirect or consequential damages will be allowed.
- .2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated loss of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other analysis that is used to show damages indirectly.
- .3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong.
- .4 No damages will be allowed for home office overhead or other home office changes or any Eichlay formula calculation.

Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents, nor will this Section 15.1.7 be deemed to apply to delay damages, which are prohibited entirely.

§ 15.2 Initial Decision

§ 15.2.1 Claims by the Contractor against the Owner, including those alleging an error or omission by the Architect but excluding those arising under Section 10.3, shall be referred initially to the Architect for consideration and recommendation to the Owner. An initial recommendation by the Architect shall be required as a condition precedent to mediation of any Claim, after the Claim has been referred to the Architect with no recommendation having been rendered by the Architect.

§ 15.2.2 The Architect will review Claims and within ten (10) days of receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the Contractor; (2) issue an initial recommendation; (3) suggest a compromise; or (4) advise the parties that the Architect is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest.

§ 15.2.3 Following receipt of the Architect's initial recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Price and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Article 15.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished.

§ 15.2.5 [Paragraph Deleted.]

§ 15.2.6 [Paragraph Deleted.]

§ 15.2.6.1 [Paragraph Deleted.]

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 Waiver Of Lien

It is distinctly understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

§ 15.3 Mediation

§ 15.3.1 In the event that the Owner or the Contractor shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute. Mediation shall be subject to and in accordance with Chapter 154 of the Texas Civil Practice & Remedies Code. Mediation shall be conducted by a mutually-agreed-upon mediator qualified as an impartial third party for purposes of Section 154.052 of the Texas Civil Practice & Remedies Code.

§ 15.3.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon agreement of both parties.

§ 15.3.3 In the event the Owner and the Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.

§ 15.3.4 The parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.3.5 Nothing herein shall preclude the Owner or the Contractor or as applicable, the Construction Manager from requesting that the Architect or one or more subcontractors be joined as parties to the mediation, to the extent allowed by their respective contracts.

§ 15.3.6 Any claim not resolved in mediation pursuant to Section 15.3 shall be subject to litigation as the sole method of dispute resolution.

§ 15.3.7 Unless otherwise agreed in writing by the Owner in the Owner’s sole discretion, the Contractor may not bring a legal action against the Owner unless:

- .1 the Contractor has given written notice to the Owner of the Claim, dispute, or other matter giving rise to the legal action within ninety-one (91) days after the date of the start of the event giving rise to the Contractor’s Claim, dispute or other matter, and
- .2 the legal action is brought within two (2) years and one (1) day after the date of the start of the event giving rise to Contractor’s Claim, dispute or other matter.

§ 15.4 Arbitration. This Section 15.4 and all subparts are intentionally deleted. No dispute arising under the Contract Documents, these General Conditions or the underlying Contract shall be subject under any circumstances to Arbitration as the method of binding dispute resolution and Owner rejects any selection otherwise made by the parties.

§ 15.5 Immunity

Contractor stipulates that Owner is a political subdivision of the State of Texas and, as such, may enjoy immunities from suit and liability under the Constitution and laws of the State of Texas. By entering into this Agreement, Owner does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically provided by law.

Executed on this the ____ day of _____, 2023.

McALLEN INDEPENDENT SCHOOL DISTRICT	NOBLE TEXAS BUILDERS, LLC.
OWNER <i>(Signature)</i>	CONSTRUCTION MANAGER <i>(Signature)</i>
Tony Forina, Board President McAllen ISD Board of Trustees	Juan Delgado, Vice President
<i>(Printed name and title)</i>	<i>(Printed name and title)</i>

APPROVED AS TO FORM:
WALSH GALLEGOS TREVINO KYLE & ROBINSON, P.C.

P Blake Henshaw

BLAKE HENSHAW

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Blake Henshaw, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:47:15 ET on 05/05/2023 under Order No. 3104238383 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

P Blake Henshaw

(Signed)

Attorney: Walsh Gallegos Trevino Kyle & Robinson P.C.

(Title)

May 5, 2023

(Dated)

**BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

**BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

SUBMITTED BY:  **SUPERVISOR:** 

Approved for presentation to the Board of Education:



Superintendent of Schools

Description	A	B	C		D	E
	Original Budget	Revised Budget 03/31/2023	Budget Amendments Under Consideration		Revised Budget 04/30/2023	
			Revisions	Transfers		
Audited Fund Balance	149,933,573	149,933,573				149,933,573
Revenues:						
Local:						
Property Taxes	84,847,227	87,656,209				87,656,209
Interest Income	449,000	1,675,871	2,733,546			4,409,417
Other Local Income	2,558,363	2,847,835	64,332			2,912,167
State:	122,747,887	119,192,024	834,434			120,026,458
Federal:	24,168,809	25,287,804	1,057,649			26,345,453
Other Sources:	0	75,052	9,733			84,785
Total Revenues	234,771,286	236,734,795	4,699,694	0		241,434,489
Expenditures:						
11 Instruction	111,529,775	118,537,429	64,332	174,509		118,776,270
12 Inst. Res. & Media Services	3,439,107	3,540,086		(2,762)		3,537,324
13 Curriculum Dev. & Inst. Staff Dev.	4,485,953	5,177,343	11,400	(39,172)		5,149,571
21 Inst. Leadership	3,232,831	3,304,854	1,400	68,981		3,375,235
23 School Leadership	13,078,246	13,839,227		45,182		13,884,409
31 Guid., Counseling & Eval. Ser.	9,892,119	10,581,105	6,800	5,803		10,593,708
32 Social Work Services	1,938,730	2,167,762	21,500	5,200		2,194,462
33 Health Services	3,011,681	3,147,640		11,560		3,159,200
34 Student (Pupil) Trans.	4,394,173	6,152,366		747		6,153,113
35 Food Services	19,375,000	23,005,889	475,000	747		23,481,636
36 Curricular/Extracurricular Act.	11,106,630	11,372,412		584,330		11,956,742
41 General Administration	7,751,869	9,105,890	338,376	(646,628)		8,797,638
51 Plant Maint. & Operations	26,638,858	23,349,819	9,733	(177,587)		23,181,965
52 Security and Monitoring Serv.	4,787,045	8,080,344	200	9,086		8,089,630
53 Data Processing Services	4,866,183	6,337,242		(254)		6,336,988
61 Community Services	110,373	151,728		(203)		151,525
71 Debt Service	6,265,094	4,463,418		(39,539)		4,423,879
81 Fac. Acquisition & Const.	21,022,428	29,395,447				29,395,447
95 Pmt. to Juv. Justice Alt. Ed. Prg.	40,000	40,000				40,000
99 Other Intergovernmental Charges	965,919	984,211				984,211
Other Uses	12,500,000	12,500,000				12,500,000
Total Expenditures	270,432,014	295,234,212	928,741	0		296,162,953
Preliminary Ending Fund Balance	114,272,845	91,434,156	3,770,953	0		95,205,109

Description	A	B	C		D	E
	Original Budget	Revised Budget 03/31/2023	Budget Amendments Under Consideration		Revised Budget 04/30/2023	
			Revisions	Transfers		
Audited Fund Balance	3,328,221	3,328,221				3,328,221
Revenues:						
Local						
Property Taxes	6,730,200	6,569,234				6,569,234
Interest Income	2,000	67,000				67,000
Other Local Income	81,000	89,167				89,167
State		141,356	211,052			352,408
Federal						
Other Sources						
Total Revenues	6,813,200	6,866,757	211,052	0		7,077,809
Expenditures:						
71 Debt Service	6,813,200	6,814,145				6,814,145
Other Uses						
Total Expenditures	6,813,200	6,814,145	0	0		6,814,145
Preliminary Ending Fund Balance	3,328,221	3,380,833	211,052	0		3,591,885

DEBT SERVICE
Revisions

REVENUES:

State

- Summary of Finance Adjustment to 5th Six Weeks for Fund 599 Debt Service Fund

\$ 211,052

211,052

Grand Total

\$ 211,052

EXPENDITURES:

None for April 2023

Grand Total

\$ -

Description	A	B	C		D	E
	Original Budget	Revised Budget 03/31/2023	Budget Amendments Under Consideration		Revised Budget 04/30/2023	
			Revisions	Transfers		
Audited Fund Balance	14,770,086	14,770,086				14,770,086
Revenues:						
Local						
Interest Income		50,587				50,587
Other Local Income	1,000,000	13,500,000				13,500,000
Other Sources	12,500,000	12,500,000				12,500,000
Total Revenues	13,500,000	26,000,000	0	0		26,050,587
Expenditures:						
36 Curricular/Extracurricular Act.				163,615		163,615
41 General Administration		163,615		(163,615)		0
51 Plant Maint. & Operations	356,000	578,310		16,167		594,477
52 Security and Monitoring Serv.		249,804				249,804
81 Fac. Acquisition & Const.	22,280,181	39,828,154		(16,167)		39,811,987
Total Expenditures	22,636,181	40,656,268	0	0		40,819,883
Preliminary Ending Fund Balance	5,633,905	113,818	0	0		790

CAPITAL PROJECTS FUND
Revisions

REVENUES:

None for April 2023

\$ - -

Grand Total

\$ -

EXPENDITURES:

None for April 2023

\$ - -

Grand Total

\$ -

BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT

MEETING DATE: May 8, 2023

SUBJECT: Discussion and Possible Action of Travel for Superintendent

REFERENCE: Goal 1: Student Achievement / Student Focus
Goal 2: People Development

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The Board of Trustees is requesting the Superintendent's Travel for consideration and approval to travel in advance when practical.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Consideration to approve the following:

Region One School Board Association (ROSBA)
May 19 - 20, 2023 at South Padre Island Convention Centre
South Padre Island, TX

Region One Superintendents' Summer Leadership Academy
June 7 - 9, 2023 at South Padre Island - South Padre Island, TX

2023 Texas Association of School Board (TASB) Summer Leadership Institute
June 14 - June 17, 2023 at the San Antonio Convention Center
San Antonio, TX

LEGAL REVIEW: None Required

BUDGETARY CONSIDERATIONS: Appropriations through the Superintendent's budget.

RECOMMENDED BOARD ACTION: That the Board of Trustees approve the Superintendent's travel.

**BOARD AGENDA REPORT
McALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

SUBJECT: Discussion and Possible Action of Travel for Superintendent

REFERENCE: Goal 1: Student Achievement / Student Focus
Goal 2: People Development

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

The Board of Trustees is requesting the Superintendent's Travel for consideration and approval to travel in advance when practical.

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

Consideration to approve the following:

The Superintendent's travel and his team's participation by invitation only to the UT Austin as follows:

- The University of Texas at Austin - Educational Leadership and Policy/Cooperative Superintendent Program
- Executive Leadership Institute (ELI)
- July 12 - 13, 2023 - 8:00 AM - 5 PM
- University of Texas at Austin Sanchez Building
- Austin, TX

- The team is as follows:
- Assistant Superintendent Business Operations
 - Assistant Superintendent District Operations
 - Assistant Superintendent Human Resources
 - Associate Superintendent Instructional Leadership
 - Director of Athletics
 - Superintendent

The purpose of the institute is for district team members to analyze a problem of practice and develop solutions to improve student outcomes. During the institute, university professors and facilitators will use various methods including discussions, case studies, reading, and small group work to address the problem of practice. Each team will have a facilitator who will guide their work as they develop their theory of action and improvement strategies.

LEGAL REVIEW: None required

BUDGETARY CONSIDERATIONS: Appropriations through the Superintendent's & Teams budget.

SUBMITTED BY: _____ **SUPERVISOR:** _____

For further information contact:
Name: Marta I. Garza
Office: 956.657.6027
eMail: migarza@mcallsisd.net

Approved for presentation to the Board of Education:



Superintendent of Schools

May 4, 2023

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

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

REFERENCE: N/A

BACKGROUND INFORMATION / REASON FOR BOARD CONSIDERATION:

The minutes for each meeting of the Board of Education are traditionally brought to the Board for approval, the minutes become the official record of Board action.

ADMINISTRATIVE CONSIDERATIONS / FACTS AND ANALYSIS:

Administration asks that the Board of Education consider approval of the attached minutes.

LEGAL REVIEW: None

BUDGETARY CONSIDERATIONS: None

RECOMMENDED BOARD ACTION:

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

Special Board Meeting April 13, 2023
Regular Board Meeting April 24, 2023

SUBMITTED BY: *Natalia Goza*

SUPERVISOR:  Tony Forina (May 4, 2023 10:20 CDT)

For further information contact:

Name: Natalia Goza
Office: Board of Trustees
Email: natalie.goza@mcallsisd.net

Approved for presentation to the Board of Education:


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Superintendent of Schools May 4, 2023

**BOARD AGENDA REPORT
MCALLEN INDEPENDENT SCHOOL DISTRICT**

MEETING DATE: May 8, 2023

SUBJECT: Annual Announcement of Continuing Education of Board Members

REFERENCE: Board Policy BBD (LEGAL)

BACKGROUND INFORMATION/REASON FOR BOARD CONSIDERATION:

A provision to the Texas Education Code (TEC) requires that the President make an Announcement on continuing education of Board Members the last meeting before an election of trustees. The Announcement should reflect whether each trustee has met or is delinquent in meeting the training required to be completed as of the date of the meeting." [TEC, 11.159(b)].

ADMINISTRATIVE CONSIDERATIONS/FACTS AND ANALYSIS:

The board president is required to read aloud the name of each member who has completed the required continuing education, who has exceeded the required hours and the names of members who are deficient in the required hours.

LEGAL REVIEW: None

BUDGETARY CONSIDERATIONS: None

RECOMMENDED BOARD ACTION: This item is for information only, no action necessary.

SUBMITTED BY: Natalia Goza

SUPERVISOR: _____

For further information contact:

Name: Natalia Goza

Office: 956 618-6094

eMail: natalie.goza@mcallenisd.net

Approved for presentation to the Board of Education:



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Superintendent of Schools

May 5, 2023