

CONTRACT

THIS CONTRACT, made and entered into effective the 12th day of November 2002 by and between **McALLEN INDEPENDENT SCHOOL DISTRICT** (hereinafter referred to as "District") and _____, a Texas Individual/Sole Proprietor (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, District requires services from commercial appliance repair services companies to service MISD District Wide for commercial appliance repair services on an as needed basis throughout the District, and

WHEREAS, Contractor submitted a bid in response to the needs of the District.

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. Contractor shall perform all of the work and provide all materials and labor required in accordance with the terms and conditions of the Contract Documents.
2. Contractor represents and warrants to District that Contractor possesses all of the licenses, permits and expertise required to provide the materials and perform the services contemplated hereunder. Contractor warrants and represents that during the term of this agreement, Contractor shall maintain all such licenses and permits. Contractor warrants that the services rendered and materials and labor furnished shall be in accordance with the terms of the Contract Documents.
3. 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:

- A. This Contract
- B. Exhibit "A" – District's Bid No. 3507 – Commercial Appliance Repair Services ("Bid"), Contractor's Response to Invitation to Bid, Board Agenda Presentation
- C. Exhibit "B" – Performance Bond (not required)
- D. Exhibit "C" – Payment Bond (not required)
- E. Exhibit "D" – Correspondence between Successful Contractor and District (if any)
- F. Exhibit "E" – Contractor's and Sub-Contractor's Certificate of Insurance
- G. Exhibit "F" – Site Maps (not required)
- H. Exhibit "G" – Price Worksheets by location, price summary sheet (not required)

4. All provisions of the Contract Documents shall be strictly complied with and conformed to by Contractor and no amendment to this Contract shall be made except upon the written consent of 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.

5. This Contract is entered into subject to the following conditions:

A. In the event that any provision or portion of any Contract Documents shall be found to be invalid or unenforceable, then such provision or portion thereof shall be reformed in accordance with the laws of the State of Texas. The invalidity or unenforceability of any provision or portion of any Contract Documents shall not affect the validity or enforceability of any other provisions or portion of the Contract Documents.

B. Contractor shall use its best efforts to keep to a minimum disruption or interruption of duties and/or work of employees and/or patrons while performing its work in accordance with the Contract Documents.

6. 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 the contract or any activity incident thereto.

7. Contractor assumes full responsibility and liability for all labor, materials and services furnished and activities conducted by Contractor pursuant to this Contract and any action or omission incident thereto.

8. Contractor agrees to hold harmless and indemnify District from any liability and damage to any item of property 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.

9. Contractor shall procure and maintain throughout the term of this Contract a policy or policies of comprehensive public liability insurance, at its sole cost and expense, insuring Contractor and District (as an additional named insured) against any and all liability for injury to or death of a person or persons or damage to property, occasioned by, arising out of, in connection with or incident to any action or omission by Contractor in supplying the labor, materials and services pursuant to this Contract or any action or omission incident thereto. The

limits of such policy or policies shall be in an amount not less than the amounts specified in the specifications, a copy of which is attached hereto as Exhibit A.

10. This Contract shall be governed by the laws of the State of Texas and shall be performable in Hidalgo County, Texas.

11. 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.

12. 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.

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.

13. The term of this agreement shall be for a primary term of one year commencing on November 12, 2002 and ending on November 11, 2003 with the option to renew for two additional one year terms provided that the price remains the same or lower.

14. As consideration for performing the services and supplying the equipment, materials and labor pursuant to the Contract Documents, District agrees to pay Contractor the hourly rates listed in the bidsheet for Bid No. 3507 – Commercial Appliance Repair Services with a 30% markup from cost for parts and supplies, a copy of such bid sheet attached hereto as Exhibit A. The payment cost for services shall be paid by District to Contractor as invoiced

upon successful and satisfactory delivery of services connected with the appliance repair services to District upon verification by District's authorized representatives of such invoice in compliance with the Specifications and the Contract Documents.

15. 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.

16. 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.

17. 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.

18. A. Termination without Cause. District and Contractor each shall have the right to terminate this Agreement without cause on fifteen (15) days written notice to the other.

B. Termination with Cause.

(1) Termination by District. District may terminate this Agreement immediately upon the occurrence of any of the following events:

(a) 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.

(b) The failure to provide evidence of liability insurance, as required by numbered Paragraph 9 hereof.

(c) The 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.

(d) In addition, if the Contractor commits a material breach of any of the terms of this Contract, other than those listed in subsections (a) through (c) above, then District may terminate this Contract upon no less than fifteen (15) days written notice.

(2) Termination by Contractor. In the event District breaches any material term of this Agreement, then Contractor may terminate this Agreement upon no less than fifteen (15) days written notice.

19. Following the expiration of this Agreement 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.

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

21. 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.

22. Any amendments to this Agreement will be effective only if in writing and signed by District and the Contractor.

23. 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.

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

25. Notwithstanding anything to the contrary contained elsewhere herein, District and Contractor hereby covenant and agree that this Agreement shall be construed in accordance with the Board Policies of District, as same may be from time to time amended.

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

27. 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.

28. This Contract constitutes the entire agreement between 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 hereof.

29. All references to Contractor also to apply to any Sub-Contractor(s) of awarded Contractor.

30. NON-APPROPRIATION OF FUNDS. In the event no funds or insufficient funds are appropriated and budgeted for the materials and labor of the services and funds are otherwise unavailable, by any means whatsoever, in any fiscal period in which the Payments for the services are due under this Agreement, then District shall, not less than sixty (60) days prior to the end of such applicable fiscal period, in writing, notify 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 Payments 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, Contractor shall stop the services on the date of such termination.

31. 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, return receipt requested addressed to the proper party, at the following addresses:

If to District: McAllen Independent School District
Attn: Superintendent of Schools
2000 N. 23rd Street
McAllen, Texas 78501

If to Contractor:

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.

EXECUTED as of the day and year first written above.

DISTRICT:

McALLEN INDEPENDENT SCHOOL DISTRICT

By: _____
President, Board of Trustees

CONTRACTOR:

By: _____

Printed Name: _____

Title: _____

Approved as to form:

Atlas & Hall, LLP by: _____

EXHIBIT A

District's Bid No. 3507 – Commercial Appliance Repair Services ("Bid"), Contractor's
Response to Invitation to Bid, Board Agenda Presentation

EXHIBIT B

Performance Bond (not required)

EXHIBIT C

Payment Bond (not required)

EXHIBIT D

Correspondence between Successful Contractor and District (if any)

EXHIBIT E

Contractor's and Sub-Contractor's Certificate of Insurance

EXHIBIT F

Site Maps (not required)

EXHIBIT G

Price Worksheets by location, price summary sheet (not required)