



Request for Qualifications 19RFQ121 – On Call A/E Services Campus Support

Date	Event
February 28, 2019 March 7, 2019	Advertise/Issue Date
March 7, 2019	Pre-Proposal Conference at 2:00PM Austin ISD Carruth Administration Center 1111 West 6th Street, Board Room, B-100. PLEASE ALLOW TIME TO PARK!
March 11, 2019	Due Date for Questions by 5:00 pm
March 15, 2019	Questions and Answers and final addendum posted on our website
March 26, 2019	RFQ opening / due date at 2:00 pm CST
May 20, 2019	AISD Board Meeting for review/approval

Deliver Sealed Proposals to: Austin ISD Construction Management 812 San Antonio Street, Suite 200 Austin, Texas 78701	Contact: Jennifer Nix Contract & Procurement Services Phone: 512-414-2241 jennifer.nix@austinisd.org
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- Questions must be submitted via e-mail to the contact person listed above. **In the e-mail subject line, type: *Questions: 19RFQ121 – On Call A/E Services Campus Support***
- Q & A and Addenda will be posted on our website: www.austinisd.org/cp/bids
- Proposals are due no later than 2:00 pm on the date indicated. Your proposals must be delivered by mail or hand delivery in a sealed envelope or carton. Proposals received after the specified time shall not be considered.
- **Please submit the following:**
 - Required**
 - One (1) hard copy marked “original” – include signed “required” forms
 - Requested**
 - One (1) digital copy on a flash drive – include signed “required” forms
 - One (1) hard copy marked “copy”
- FAX, e-mail or other electronic proposals **will not be accepted.**
- Proposals must be plainly marked with **name and address of the Offeror and the RFQ number and Title above.**

Section 1

The solicitation consists of the following documents and all addenda that may be issued:

Request for Qualifications
Exhibit “A” – Agreement Between Owner and Architect/Engineer

The Austin Independent School District (AISD) intends to select architectural/engineering consultants for Campus Support Projects on the basis of professional qualifications. In order to be considered for selection, firms must fully complete all forms included in this Request for Qualifications (RFQ). Please follow the proposal format below.

Tab 1: General Information

Tab 2: References

Tab 3: Projects (include requested information for sub-consultants also)

Tab 4: Workload (include requested information for sub-consultants also)

Tab 5: Organization Chart

Tab 6: Miscellaneous

- Cost Control
- Construction Administration
- Accelerated Schedule
- Energy/Utility Conservation and Sustainability

Tab 7: Authorization Form

Tab 8: HUB Compliance Documents

An AISD Selection Panel will evaluate all submittals with the anticipation of making recommendations to the Superintendent. The AISD Board of Trustees will take action on the consultant's selection recommendation during a regularly scheduled Board meeting, if required.

AISD may conduct interviews with the top ranked respondents. If selected, your firm will be contacted to schedule an interview.

Attached is the AISD Agreement between Owner and Architect/Engineer (Exhibit "A"). It includes various insurance provisions, including professional liability coverage, and related requirements. Since Article II of the Agreement includes provisions related to fees and fees are not part of the District's A/E selection process, Article II has been deleted from the Agreement for purposes of the RFQ to avoid any perception to the contrary. However, please note that AISD intends to negotiate fees based on scope of work and expected effort, not a fixed percentage.

AISD encourages full participation in all phases of procurement activities and shall afford a full and fair opportunity to all vendors to compete for District contracts. Historically Underutilized Businesses are businesses in which at least 51 percent of the ownership and management is by minority group members or women, or in the case of a publicly owned business, at least 51 percent of the stock is owned and managed by minority group members or women in all phases of the procurement. **All responding firms are advised that HUB participation is a fundamental and strategic objective for the District.**

Responding firms are advised to determine if they are required under Chapter 176 of the Texas Local Government Code to file a completed conflict of interest questionnaire with AISD. If completion of the questionnaire is required, the Conflict of Interest Questionnaire (Form CIQ) should be completed and submitted online at:

<http://www.austinisd.org/cp/cis>

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Texas Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

After the AISD Board of Trustees selects the Offeror, the successful Offeror will be required to complete an electronic Form 1295 (“Form 1295”) on the Texas Ethics Commission website at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm and submit the completed and executed Form 1295, including the certification of filing, to AISD prior to entering into a contract with AISD in accordance with this statute. Additional information is available on the Texas Ethics Commission website at www.ethics.state.tx.us. Submission of a response to this Request for Proposals indicates the responding firm’s acceptance and intended compliance with these requirements.

The responding firms, or their agents, shall undertake no activities, actions, or contacts to promote or advertise their RFQ submissions to the AISD Board of Trustees, Superintendent, central office administrators, administering committees, members of the Selection Panel, or members of the Construction Management Department staff. Violation of this provision will be grounds for disqualification of the responding firm.

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Authorized communications are to be with the designated AISD contact person as indicated in Section 2 of the RFQ. Any substantive clarification or revision of the RFQ will be made only by RFQ Addendum.

Responding firms shall not be eligible to be considered for this solicitation if the responding firms, or their agents, engaged in or attempted to engage in prohibited communications.

TAB 1 – GENERAL INFORMATION

NAME OF FIRM: _____

BUSINESS ADDRESS: _____

TELEPHONE NUMBER: _____

TYPE OF ORGANIZATION: (Individual, Partnership, Corporation, Association)

NUMBER OF YEARS FIRM IN BUSINESS: ____

Give a brief history of your firm, including date established, record of growth, type of work, and any specialties.

What do you believe is unique about your firm’s potential contribution to AISD facilities?

If you want to attach a brochure or other printed material, which describes your firm’s services, organization, and examples of your school projects you may do so, but it is not required.

1.	Principals:	Texas Architect/Engineer Registration No.:
	_____	_____
	_____	_____
	_____	_____

2. Full-Time Employees (minimum 32-hours/week):
No. of Registered Architects, excluding Principals: ____

No. of Registered Engineers, excluding Principals (by type):

No. of Drafters/CAD Operators: _____

No. of Clerical Employees: _____

3. Part-Time Employees (minimum 16-hour/week, by type):

4. Include a resume for each principal and associate with your firm. Please feel free to provide professional citations (both nominations and actual awards).

5. Services Proposed:

<u>Services</u>	<u>Performed by Your Firm</u>	<u>Performed by Sub-Consultant (firm name)</u>
Architectural:		<input type="checkbox"/> _____
Structural:		<input type="checkbox"/> _____
Mechanical:		<input type="checkbox"/> _____
Electrical:		<input type="checkbox"/> _____
Civil:	<input type="checkbox"/>	<input type="checkbox"/> _____
Other:	<input type="checkbox"/>	<input type="checkbox"/> _____

6. Professional Liability Insurance

Have any claims been made against your firm for errors and omissions in the past five (5) years?

Yes No

If so, what was the dispensation of the claim or claims?

TAB 2 –
REFERENCES

Provide three references for representative building projects for which Architectural/Engineering Services were performed in the last eight (8) years, beginning with projects in Austin and/or a school district (K-12) if available.

1. Project: _____

Scope of Project: _____

Services Performed: _____

Client: _____

Contact person: _____

Telephone Number: _____ Email: _____

2. Project: _____

Scope of Project: _____

Services Performed: _____

Client: _____

Contact person: _____

Telephone Number: _____ Email: _____

3. Project: _____

Scope of Project: _____

Services Performed: _____

Client: _____

Contact person: _____

Telephone Number: _____

Email: _____

TAB 3 –
PROJECTS

Provide six (6) representative building projects for which Architectural/Engineering Services were performed in the last eight (8) years, beginning with projects in Austin and/or a school district (K-12) if available. If project was done by a principal/partner/employee while at another firm, clearly note in “Services Performed”.

1. Project: _____

Scope of Project: _____

Services Performed: _____

Number of Change Orders: _____

Describe: _____

Construction Cost: _____ Date Construction Complete: _____

Client: _____

Contact Person: _____ Telephone Number: _____

2. Project: _____

Scope of Project: _____

Services Performed: _____

Number of Change Orders: _____

Describe: _____

Construction Cost: _____ Date Construction Complete: _____

Client: _____

Contact Person: _____ Telephone Number: _____

3. Project: _____

Scope of Project: _____

Services Performed: _____

Number of Change Orders: _____

Describe: _____

Construction Cost: _____ Date Construction Complete: _____

Client: _____

Contact Person: _____ Telephone Number: _____

4. Project: _____

Scope of Project: _____

Services Performed: _____

Number of Change Orders: _____

Describe: _____

Construction Cost: _____ Date Construction Complete: _____

Client: _____

Contact Person: _____ Telephone Number: _____

5. Project: _____

Scope of Project: _____

Services Performed: _____

Number of Change Orders: _____

Describe: _____

Construction Cost: _____ Date Construction Complete: _____

Client: _____

Contact Person: _____ Telephone Number: _____

6. Project: _____

Scope of Project: _____

Services Performed: _____

Number of Change Orders: _____

Describe: _____

Construction Cost: _____ Date Construction Complete: _____

Client: _____

Contact Person: _____ Telephone Number: _____

TAB 4 –
WORKLOAD

List current workload (five largest projects):

<u>Project Name/Type</u>	<u>Constr. Cost</u>	<u>% Completed</u>	<u>Est. Compl. Date</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

List remaining workload (combined):

TAB 5 – ORGANIZATION CHART

Provide proposed organization chart for completing AISD project work.

TAB 6 – MISCELLANEOUS

1. Cost Control

Explain the method used by your firm to arrive at anticipated construction cost and provide reasons for using the method. Provide applicable examples of project cost containment, budget management, and value engineering efforts:

2. Construction Administration

Explain your construction administration procedures.

3. Accelerated Schedule

Explain the methods and management techniques you use to accomplish an aggressive schedule for design and construction. Provide examples of successful projects with comparable stringent schedules.

4. Energy/Utility Conservation and Sustainability

Provide a summary of your energy and utility conservation and sustainability related design experience.

TAB 7 – OTHER FORMS

Provide completed Authorization Form included in this RFQ.

AUTHORIZATION FORM

The foregoing is true and correct. The Austin Independent School District, or any authorized representative of the Austin Independent School District, is authorized by the undersigned to contact any firm, institution, or person listed above to obtain information about our firm's services, financial condition, and any other information, which the Austin Independent School District might determine as being desirable.

Firm: _____

By: _____

Title: _____

Date: _____

TAB 8 – HUB COMPLIANCE DOCUMENTS

See separate HUB compliance requirements for this RFQ.

EXHIBIT "A"

AGREEMENT BETWEEN OWNER AND ARCHITECTURE/ENGINEERING

AISD PROJECT NO. _____

PROJECT TITLE AND ADDRESS: _____

AGREEMENT BETWEEN OWNER AND ARCHITECT/ENGINEER

This Agreement (“Agreement”) is made as of the _____ day of _____, 20____,
between

Austin Independent School District
1111 West Sixth Street
Bldg. B, Ste. 300
Austin, Texas 78703-5399
Attn: Executive Director, Contract and Procurement Department
Phone: 512-414-2141

herein referred to as “Owner”

and the Architect/Engineer:

Attn: _____
Phone: _____
Fax: _____

herein referred to as “Architect/Engineer”

Article I: The Architect/Engineer agrees to perform professional services for the “Project” described below, or as stated in an attached proposal from the Architect/Engineer dated _____, 20____. (Any terms and conditions that may be contained in a proposal attached under this Article I, other than the description of the professional services and compensation amount for such services, are not a part of this Agreement.)

CONSTRUCTION FORM AISD/AE-Consultant (Rev. February '19)
AUSTIN INDEPENDENT SCHOOL DISTRICT

(Provide Project name and address, description of scope of work and services, including other consultants as may be required to provide these services, or provide a summary statement for an attached proposal.)

Article II:

- A. Architect/Engineer agrees to undertake and perform all services necessary and appropriate to provide complete architectural and engineering professional services for the Project as described in Article I (the "Basic Services"). All services performed under this Agreement shall be performed with the professional skill and care ordinarily provided by competent engineers or architects, as applicable, under the same or similar circumstances and professional license, and in compliance with all applicable laws and the terms of this Agreement. Such services shall be performed in accordance with the time frames established by this Agreement, or agreed to by Owner and Architect/Engineer in writing, or if no such time frames have been established, then as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect, as applicable. Architect/Engineer shall obtain the written approval of Owner prior to commencing each phase of the services.
- B. Architect/Engineer must submit for Owner's approval any consultants or sub-consultants to be retained by Architect/Engineer for the Project. Approved consultants shall be listed in Exhibit "A" attached hereto and incorporated herein. Architect/Engineer shall not change any of the approved consultants and shall not retain any additional consultants without the prior written approval of Owner. Architect/Engineer shall submit, in each instance, an amended HUB Utilization Report ("HUR") on the form supplied by Owner ("HUB Utilization Report ("HUR")") to reflect each approved change and/or each approved addition of a consultant or sub-consultant under this Agreement.

Article III: For the professional services required under this Agreement, Owner shall compensate the Architect/Engineer as follows:

- A. For the Basic Services, compensation shall be made based on one of the following methods as indicated below:
1. "FIXED" FEE in the amount of: _____ (\$ _____) Dollars.

OR

2. "NOT TO EXCEED" FEE based on the hourly rates as described below under Article III.B, with a maximum "Not to Exceed" fee in the amount of:

_____ Dollars.

- B. For (1) a "Not to Exceed" Fee for Basic Services described in Article III.A.2, and (2) Additional Services (services beyond the Basic Services) requested by Owner in writing, compensation will be computed as follows or as otherwise mutually agreed to by Owner and Architect/Engineer: For the time of principals and employees of Architect/Engineer and for the time of consultants retained by Architect/Engineer, compensation shall be calculated based on the fully loaded hourly rates set forth on Exhibit "A" attached hereto and incorporated herein or as otherwise mutually agreed to by Owner and Architect/Engineer. In evaluating the hourly rates proposed by Architect/Engineer hereunder, Owner may evaluate the proposed rates in relation to professionally determined prevailing rates for comparable benchmarked services. If required by Owner, a "not to exceed" amount mutually agreed to by Owner and Architect/Engineer shall also be established based on the agreed upon hourly rates.
- C. For reimbursable expenses, amounts expended for Owner's account with the prior written approval of Owner, a multiple of 1.05 times the amount reasonably billed to the Architect/Engineer.
- D. Unless otherwise agreed to in writing by Owner and Architect/Engineer, payments shall be made monthly on the basis of invoices submitted by Architect/Engineer, together with any supporting documentation that Owner may require. Undisputed payments not made when due shall accrue interest in accordance with the provisions of Section 2251.021 et seq. of the Texas Government Code. A HUB Utilization Report on the form supplied by Owner confirming payment amounts to HUB firms shall be submitted with each invoice submitted by Architect/Engineer. Owner may nullify or withhold any request for payment by Architect/Engineer if Architect/Engineer fails to submit the HUB Utilization Reports or amended HUB Utilization Report ("HUR")s, as required.

Article IV: Owner shall have the right to terminate this Agreement for convenience by providing Architect/Engineer with notice of termination. Upon receiving notice, Architect/Engineer shall cease working on the Project or shall only perform such further services as directed by Owner. Architect/Engineer shall be entitled to payment for all services actually performed and reimbursable expenses incurred (in accordance with the applicable provisions of Article III) to the date of termination, including such further services, if any, which Owner directed Architect/Engineer to perform in completion of the services. No other compensation, fee, or penalty will be due to Architect/Engineer as a result of Owner's termination.

Article V: If either party fails to perform an obligation under this Agreement, the non-defaulting party shall provide the defaulting party with 10 days written notice and opportunity to cure the default. Upon failure to cure, the non-defaulting party will have the right to pursue any remedies available to it at law or equity. Owner's remedies shall include the right to terminate this Agreement and the right to nullify or withhold payment, in whole or in part, to Architect/Engineer. The parties agree to mediate any dispute in good faith prior to filing suit for damages. Venue for any action brought under or in connection with this Agreement shall be in courts of competent jurisdiction in Austin, Travis County, Texas.

Article VI:

- A. The Architect/Engineer agrees that items such as plans, drawings, photos, designs, studies, specifications, computer programs, schedules, technical reports, or other work products which are specified to be delivered under this Agreement, and which are paid for by Owner in accordance with the terms of this Agreement, are subject to the rights of Owner in effect on the date of this Agreement. These rights include the right to use, duplicate and disclose such items in whole or in part, in any manner and for whatever purposes, and to have others do so. If an item produced by the Architect/Engineer is copyrightable, the Architect/Engineer may copyright it, subject to the rights of Owner stated herein. Architect/Engineer shall deliver to Owner, promptly upon the completion of Architect/Engineer's work or any earlier termination of this Agreement, complete copies of such work, including reproducible record prints and digital computer document copies in the format specified by Owner.
- B. Owner reserves the royalty-free, non-exclusive and irrevocable license to reproduce, publish, modify and use such items and to authorize others to do so. Owner's rights include, but are not limited to, the right to use such items in the event Architect/Engineer is terminated pursuant to the terms of this Agreement.
- C. Should the Architect/Engineer be terminated under this Agreement, Owner shall have the right to continue the Project and to have high quality reproducible and digital computer document copies in the format specified by Owner, of the drawings, specifications and other documents, and to have them completed, corrected, revised or added to by another architect or engineer in accordance with the applicable statutory provisions of the Regulation of Architecture and Related Practices and the regulatory provisions of the Texas Board of Architectural Examiners, or the Texas Engineering Practice Act and Rules. The Architect/Engineer shall include in its contracts with consultants appropriate provisions to achieve the purpose of this Article

Article VII:

- A. Architect/Engineer shall maintain insurance in the types, and with coverage in amounts not less than those described below for the duration of the Agreement, and shall require all consultants to maintain insurance required by Owner for consultants. If Owner does not require specific coverage for consultants, then Architect/Engineer shall require its consultants to maintain commercially reasonable professional liability, commercial general liability and other appropriate insurance. Owner's requirements are minimum requirements, and Architect/Engineer may maintain additional or greater coverage.
1. **Workers' Compensation and Employers' Liability Insurance** coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Title 5, Subtitle A, Texas Labor Code) and minimum policy limits for Employers Liability Insurance of \$500,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$500,000 bodily injury by disease each employee. The Architect/Engineer's policy shall apply to the State of Texas and include these endorsements in favor of the Owner:
 - (a) Waiver of Subrogation in favor of the Owner.
 - (b) 30 day Notice of Cancellation.
 2. **Commercial General Liability Insurance** with a minimum combined bodily injury and property damage per occurrence limit of \$1,000,000 and a general aggregate limit of \$2,000,000, completed operations/products aggregate limit of \$2,000,000, and Personal and Advertising Injury limit of \$1,000,000. The policy shall contain the following provisions:
 - (a) Blanket contractual liability coverage for liability assumed under this Agreement and all contracts relative to this Project.
 - (b) Contractors/Subcontractors Work coverage.
 - (c) Aggregate limits of insurance per project endorsement.
 - (d) Owner listed as an additional insured. Such coverage shall provide for Owner to be covered against claims arising out of construction operations and completed operations without further restriction and such coverage shall be endorsed to be primary and non-contributory insurance coverage to Owner.
 - (e) 30 day notice of cancellation, nonrenewal or substantial modification in favor of the Owner.
 - (f) Waiver of Transfer Right of Recovery Against Others in favor of the Owner.

3. **Business Automobile Liability Insurance** for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$500,000 bodily injury per person, \$1,000,000 bodily injury per accident and at least \$250,000 property damage liability per accident. The policy shall contain the following endorsements in favor of the Owner:
 - (a) Waiver of Subrogation endorsement in favor of Owner.
 - (b) 30 day Notice of Cancellation endorsement.
 - (c) Additional Insured endorsement in favor of Owner.

4. **Professional Liability Insurance.** Throughout the period of the Architect/Engineer's responsibility under this Agreement and for three years thereafter (if available), Architect/Engineer shall maintain in force Architects and Engineers Professional Liability Insurance with a minimum limit as stated below per claim and in aggregate to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed with respect to plans, maps, drawings, specifications, analyses, reports, surveys, change orders, or designs prepared by the insured. The policy shall provide for limits on any one claim of not less than \$1,000,000 and a deductible of not more than 2.0 percent of the policy limits, unless a different minimum policy limit or deductible is otherwise approved in writing by the Executive Director of Construction Management. In the event the Executive Director of Construction Management determines that coverage in higher amounts is needed to protect Owner, the Executive Director may require different limits and deductibles with any additional premiums treated as a reimbursable expense. The policy shall contain an "awareness" clause to the effect that, if the insured shall, during the policy period, become aware of and give notice to the insurer of any circumstances during the policy period which may give rise to subsequent claim, any subsequent claim arising out of those circumstances will be deemed to have been made during the policy period. Like coverages will be provided for all civil, structural, mechanical, and/or electrical consultants to the Architect/Engineer. The policy shall provide for 30-day notice of cancellation in favor of the Owner.

5. All insurance coverage shall be evidenced by a certificate or certificates of insurance completed and forwarded to Owner on forms approved or deemed approved by the Texas Department of Insurance under Chapter 1811 of the Texas Insurance Code and provided or approved by Owner. The Architect/Engineer must forward such certificate(s) of insurance and all required endorsements to Owner before the

Agreement is executed, as verification of all coverage required above. The Architect/Engineer shall not commence services until the required insurance has been obtained and until such insurance has been reviewed by Owner. Approval of insurance by Owner shall not relieve or decrease the liability of the Architect/Engineer hereunder and shall not be construed to be a limitation of liability on the part of the Architect/Engineer.

6. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date. The Architect/Engineer shall maintain continuous coverage for the duration of this Agreement and for not less than twenty-four (24) months, unless otherwise required herein, following substantial completion of the Project. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. The Architect/Engineer shall, on at least an annual basis, provide Owner with a certificate of insurance as evidence of such insurance.
7. The Architect/Engineer's insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of A VII or better. Owner will accept workers' compensation coverage written by the Texas Mutual Insurance Company (f/k/a Texas Workers Compensation Insurance Fund).
8. All endorsements naming Owner as additional insured, waivers, and notices of cancellation endorsements as well as the certificate of insurance shall indicate:

Austin Independent School District
c/o Director, Department of Construction Management
1111 West 6th Street
Austin, Texas 78703

9. If insurance policies are not written for amounts specified above, the Architect/Engineer shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
10. Owner reserves the right to review the insurance requirements set forth during the effective period of this Agreement and to make reasonable adjustments to insurance coverage, limits and exclusions when deemed necessary and prudent by Owner based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Architect/Engineer.

11. The Architect/Engineer shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.
 12. The Architect/Engineer shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the certificate of insurance.
 13. The Architect/Engineer shall provide the Owner thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.
 14. The insurance coverages required under this Agreement are required minimums and are not intended to limit the responsibility or liability of the Architect/Engineer.
- B. Architect/Engineer hereby expressly agrees to indemnify, defend and hold harmless Owner, and its officers, agents, employees and members of its governing body, from and against liability for damage, including all claims, demands, costs, causes of action and reasonable attorney's fees for the defense of such claims and demands, to the extent that the damage is caused by or resulting from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by Architect/Engineer, or Architect/Engineer's agents, consultants under contract, or another entity over which the Architect/Engineer exercises control.
- C. Article VII.B above shall in no way obligate Architect/Engineer to defend Owner or its officers, agents, employees or members of its governing body against a claim based wholly or partly on the negligence of, fault of, or breach of contract by Owner, Owner's officers, agents, employees or members of its governing body, or other entity over which Owner exercises control, excluding Architect/Engineer and Architect/Engineer's agents, employees or subconsultants. Provided, however, once liability has been determined in connection with such claim and if it is determined that Architect/Engineer is liable in whole or in part, Architect/Engineer shall promptly upon demand reimburse Owner for the reasonable attorneys' fees incurred by Owner in defense of such claim in proportion to Architect/Engineer's liability.
- D. Notwithstanding anything contained in Article VII.C above to the contrary, Architect/Engineer acknowledges and agrees that Article VII.C shall not affect Owner's rights to defense as an additional insured under the requirements of Article VII.A.2 and Article VII.A.3 above.

Article VIII:

A. Criminal History Record Information Review of Covered Employees. Architect/Engineer shall, at its sole cost and expense, comply with the provisions of this Article and all provisions of Texas Education Code (“TEC”) §22.08341, as may be amended, regarding criminal history record information review of all covered employees (hereafter defined) in connection with the Project.

1. As used herein, the term “covered employee” shall mean an individual employed by Architect/Engineer or an approved consultant or sub-consultant or an individual Architect/Engineer or individual approved consultant or sub-consultant who (1) has or will have continuing duties on the Project site related to the services to be performed in connection with the Project and (2) has or will have the opportunity for direct contact with students in connection with the individual’s continuing duties. An individual does not have the opportunity for direct contact with students if all the conditions of TEC §22.08341(c) are satisfied. If an individual employed by Architect/Engineer or an approved consultant or sub-consultant or an individual Architect/Engineer or individual approved consultant or sub-consultant will enter the Project site from time to time under this Agreement when one or more students are present on the Project site, such individual is deemed by Owner to be a covered employee for purposes of this Article VIII. If the Architect/Engineer determines that the conditions of a “covered employee” do not apply to an individual, the Architect/Engineer shall make a reasonable effort to ensure that the conditions or precautions that resulted in that determination continue to exist throughout the time the contracted services are provided.
2. Architect/Engineer shall, at its sole cost and expense, comply with the provisions of TEC §22.08341 and the further provisions of this Article VIII with regard to each covered employee. In accordance with TEC §22.08341, but in any event prior to the date such covered employee enters the Project site, Architect/Engineer shall obtain with respect to its covered employees and cause each consultant and sub-consultant under this Agreement to obtain with respect to its covered employees the criminal history record information as required by TEC §22.08341 and submit to Owner the certifications required by Articles VII.A.5 and 6. **[Contact the Texas Department of Public Safety Crime Records Service at (512) 424-5079 for instructions on obtaining national criminal history record information.]**
3. Architect/Engineer shall not assign to, permit or allow on the Project site any covered employee who has a disqualifying criminal history. A covered employee has a “disqualifying criminal history” under this Article VIII if the covered employee has been convicted of one of the following offenses during the preceding thirty (30) years, and at the time the offense occurred the victim of the offense was under 18 years of age or enrolled in a public school: (i) a felony offense under Title 5 of the Texas Penal Code; (ii) an offense on conviction of which a defendant is

required to register as a sex offender under Chapter 62 of the Texas Code of Criminal Procedure; or (iii) an offense under the laws of another state or federal law that is equivalent to an offense under (i) or (ii) above.

4. Architect/Engineer shall maintain at all times a list of all covered employees (as updated from time to time, the "List of Covered Employees") which contains the following information for each covered employee: (i) full name; (ii) whether, in accordance with the applicable requirements of TEC §22.08341, Architect/Engineer obtained the required history record information; (iii) the full name of the covered employee's employer, if applicable; and (iv) Texas driver's license or other identification number or such other information as Owner may request from time to time to enable Owner to obtain criminal history record information for the covered employee. The covered employees on the List of Covered Employees shall be grouped by employer, if applicable.

5. Prior to any entry on the Project site by a covered employee, Architect/Engineer shall deliver to Owner, or its designee if directed by Owner, an electronic copy in PDF format of the initial List of Covered Employees for all covered employees, together with Architect/Engineer's duly completed and executed certification on a form provided by Owner ("Architect/Engineer Certification") by the terms of which Architect/Engineer certifies to Owner that (i) all information on the List of Covered Employees attached to the Architect/Engineer Certification is true and correct in all respects and all covered employees employed by Architect/Engineer on the Project are included on the List of Covered Employees; (ii) Architect/Engineer has obtained (with respect to its covered employees) and has caused each consultant or sub-consultant under this Agreement to obtain (with respect to its covered employees) all required criminal history record information relating to each covered employee on the List of Covered Employees in accordance with TEC §22.08341; (iii) each consultant/subcontractor under this Agreement contracting directly with Architect/Engineer (each a "Consultant") has duly completed and executed a Consultant Certification (hereafter defined) and each duly completed and executed Consultant Certification is attached to the Architect/Engineer Certification; (iv) if applicable, each Sub-consultant on the Project has provided a duly completed and executed Sub-consultant Certification to the appropriate Consultant in accordance with this Agreement; and (v) none of the covered employees on the List of Covered Employees has a disqualifying criminal history under this Article VIII. If it is determined that any statement in any Architect/Engineer Certification, Consultant Certification, or Sub-consultant Certification is untrue or misrepresented when made or Architect/Engineer otherwise fails to comply with this Article VIII, Architect/Engineer shall be in material default under this Agreement.

6. As used herein, "Consultant Certification" shall mean a duly completed and executed certification on a form provided by Owner by the terms of which Consultant certifies to Owner and Architect/Engineer that (i) all of the covered employees employed by Consultant on the Project are included on the List of Covered Employees and properly identified as employees of Consultant; (ii) all information on the List of Covered Employees with respect to the covered employees employed by Consultant is true and correct in all respects; (iii) Consultant has obtained all required criminal history record information relating to each covered employee of Consultant on the List of Covered Employees in accordance with TEC §22.08341; (iv) none of the covered employees on the List of Covered Employees employed by Consultant has a disqualifying criminal history under this Article VIII; and (v) if applicable, attached to the Consultant Certification is a duly completed and executed Sub-consultant Certification in the form provided by Owner obtained by Consultant from each sub-consultant/sub-subcontractor employed on the Project by or under Consultant (each a "Sub-consultant") and employing one or more covered employees. As used herein "Sub-consultant Certification" shall mean a duly completed and executed certification in a form provided by Owner from each Sub-consultant.
7. Architect/Engineer shall, as the Project progresses, comply with the provisions of this Article VIII with respect to each new covered employee to be employed on the Project and not previously listed on the List of Covered Employees. Each new covered employee shall be added to the List of Covered Employees, with the name highlighted and the dated of employment noted. In addition, as the Project progresses, each covered employee on the List of Covered Employees who is no longer employed on the Project shall be marked as "inactive" and the last date of such employee's employment on the Project shall be noted, and for each covered employee previously designated as "inactive" and once again employed on the Project site, the "inactive" designation shall be removed and the date of reemployment shall be noted. Each time Architect/Engineer makes a change to the List of Covered Employees, Architect/Engineer must submit to Owner, or its designee if directed by Owner, within five (5) business days of the date of such change, an electronic copy in PDF format of the updated List of Covered Employees current as of the third (3rd) business day prior to the date of delivery, together with a fully executed copy of the Architect/Engineer Certification dated within three (3) business days of the date of delivery.
8. If, during the Project, Architect/Engineer, a consultant or sub-consultant under this Agreement or Owner receives updated criminal history record information for a covered employee that includes a disqualifying criminal history under this Article VIII, or it is determined that a covered employee is on the Project site in violation of this Article VIII, then, notwithstanding anything contained in Article V or the

Contract Documents hereof to the contrary, Architect/Engineer shall immediately remove or cause to be removed such covered employee from the Project site with no requirement of written notice from Owner and shall prohibit such covered employee from future entry on the Project site. Owner reserves the right to cause Owner's police or other security personnel to remove such employee from Owner's property.

- B. Identification Badges for Persons Entering Project Site. Architect/Engineer shall, at its sole cost and expense, comply and cause each consultant and sub-consultant under this Agreement to comply with the provisions of this Article VIII.B regarding the issuance of identification badges for all covered employees and non-covered employees (hereafter defined) entering the Project site under this Agreement. Owner has notified Architect/Engineer that Owner has contracted with a provider of workforce screening services (the "Provider") for, among other things, the issuance of identification badges for all persons entering the Project site under this Agreement. Each individual employed by Architect/Engineer or a consultant or sub-consultant under this Agreement or an individual Architect/Engineer or individual consultant or sub-consultant under this Agreement must wear a valid and unexpired Austin Independent School District identification badge issued by Provider (each an "AISD badge") at all times while on the Project site. The following provisions shall apply to the issuance of AISD badges for covered employees and non-covered employees, as applicable. As used herein, the term "non-covered employee" shall mean an individual employed by Architect/Engineer or a consultant or sub-consultant under this Agreement or an individual Architect/Engineer or individual consultant or sub-consultant under this Agreement who will be entering the Project site at any time under this Agreement and is not a covered employee under this Article VIII.

1. Covered Employees.

- (a) Upon Provider's receipt of a copy of the List of Covered Employees from Owner and the completed consent and authorization form as required by Provider for each covered employee requiring an initial or renewal AISD badge, Provider will issue an AISD badge for each such covered employee. Architect/Engineer shall be responsible for paying or causing each consultant or sub-consultant under this Agreement to pay, as applicable, to Provider all costs associated with the issuance of AISD badges for the respective covered employees of each such employer.
- (b) As the Project progresses, Architect/Engineer shall deliver to Owner, in accordance with this Article VIII, an electronic copy in PDF format of each updated List of Covered Employees, together with an executed copy of the accompanying Architect/Engineer Certification. If an updated List of Covered Employees includes new covered employees requiring AISD

badges, Architect/Engineer shall highlight the new names on the updated List of Covered Employees.

- (c) If during the Project, Architect/Engineer, a consultant or sub-consultant under this Agreement or Owner receives updated criminal history record information for a covered employee that includes a disqualifying criminal history under this Article VIII, Architect/Engineer shall immediately notify Provider in writing that such covered employee is prohibited from future entry on the Project site and return such covered employee's AISD badge to Provider. Such covered employee shall thereafter be marked as "inactive" on the List of Covered Employees.
2. Non-covered Employees. For each non-covered employee requiring an AISD badge, Architect/Engineer shall submit or cause to be submitted to Provider the full name of the non-covered employee and the name of such employee's employer, if applicable. Upon Provider's receipt of the names of such non-covered employees and the completed consent and authorization form as required by Provider for each non-covered employee requiring an initial or renewal AISD badge, Provider will issue an AISD badge for each such non-covered employee. Architect/Engineer shall be responsible for paying or causing each consultant or sub-consultant under this Agreement to pay, as applicable, to Provider all costs associated with the issuance of AISD badges for the respective non-covered employees of each such employer.

Article IX: This Agreement constitutes the entire agreement between the parties hereto as to the subject matter hereof, superseding any prior oral or written agreements, and can only be amended by a written document signed by the parties. Architect/Engineer shall not assign its rights or obligations under this Agreement without the prior written consent of Owner. Any such assignment shall be void unless approved by Owner in writing. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Time is of the essence of this Agreement.

Article X: Any notice required to be given by this Agreement shall be in writing. Notice given under this Agreement shall be deemed delivered, whether or not actually received, upon deposit in the U.S. mail, when sent certified, return receipt requested, postage prepaid, correctly addressed to the recipient at the address shown on page 1, with a copy sent concurrently by facsimile. Notice given in any other manner shall be deemed delivered if and when actually received. Any party may change its address for notice by providing written notice of address change in the manner provided in this Article X. Such change will be deemed effective 14 days after it is delivered.

Article XI: If any word, phrase, clause, sentence or provision of this Agreement, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid, void or unenforceable, that finding shall only affect such word, phrase, clause, sentence or

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provision, and such finding shall not affect the remaining portions of this Agreement, this being the intent of the parties in entering into this Agreement, and all provisions of this Agreement are declared to be severable for this purpose.

Article XII: The person signing this Agreement on behalf Architect/Engineer represents and warrants that he/she is duly authorized to execute this Agreement on behalf of Architect/Engineer.

Article XIII: Architect/Engineer certifies pursuant to Texas Government Code Section 2252.151 *et al.* that it is not identified on the Texas Comptroller's list of companies known to have contracts with or provide supplies or services to a foreign terrorist organization. Architect/Engineer further certifies that it will not take any action that would cause it to be included on the Texas Comptroller's list, and that any such action will result in immediate termination of this Agreement by Owner.

Article XIV: Architect/Engineer certifies and verifies that prior to or contemporaneously with the execution of this Agreement, it has delivered to Owner a fully executed written verification in accordance with Texas Gov't Code Section 2270.001 *et al.*, and attached hereto as Exhibit "B" verifying that Architect/Engineer or any affiliate, subsidiary, or parent company of Architect/Engineer, if any, does not boycott Israel and will not boycott Israel during the term of this Agreement. If Architect/Engineer violates the verification, it will result in immediate termination of this Agreement by Owner. Owner will not execute this Agreement until such verification is fully executed and delivered to Owner.

Article XV: All notices under this Agreement shall be in writing and shall be delivered to the party entitled to receive the same by hand (including Federal Express or other courier service) or U.S. Certified Mail, return receipt requested, addressed as follows (or as amended in writing in the future):

to Owner:

Austin Independent School District
1111 W 6th Street – Suite A330
Austin, Texas 78703
Attn: Exec Dir, Contr & Procurement
Phone: 512-414-3121
E-mail: _____

to Architect/Engineer:

Notice sent prepaid, by certified mail, return receipt requested, properly addressed as provided herein, with copy sent concurrently by e-mail, shall be deemed delivered, whether or not actually received, upon deposit in the U.S. mail. Notice sent by any other manner will be deemed delivered if and when actually received. Any party may change its address for notice by providing written notice of address change in the manner provided by this Section. Such change will be deemed effective 14 days after it is delivered

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Executed to be effective as of the date first set forth above, which shall be filled in by Owner upon its execution of this Agreement.

ARCHITECT/ENGINEER:

OWNER:

AUSTIN INDEPENDENT SCHOOL DISTRICT

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

STATEMENT OF CERTIFICATION

The Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78701-2337, Telephone: (512) 305-9000, has jurisdiction over individuals licensed as architects under the Regulation of Architect and Related Practices, Chapter 1051 of the Texas Occupations Code.

The Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741, Telephone: (512) 440-7723, Fax: (512) 442-1414 has jurisdiction over individuals licensed as Professional Engineers under *TEXAS ENGINEERING PRACTICE ACT AND RULES*.

EXHIBIT "A"

ARCHITECT/ENGINEER:

POSITION

FULLY LOADED HOURLY RATE

CONSULTANTS RETAINED BY ARCHITECT/ENGINEER:

1. CONSULTANT'S NAME:

[REDACTED]

POSITION

FULLY LOADED HOURLY RATE

2. CONSULTANT'S NAME:

[REDACTED]

POSITION

FULLY LOADED HOURLY RATE

EXHIBIT "B"

TEX. GOV'T CODE CHAPTER 2270 VERIFICATION

STATE OF TEXAS }
COUNTY OF TRAVIS }

Date: _____
Name of Affiant: _____
Title of Affiant: _____
Business Name of company ("Company"): _____
County of Company: _____

Affiant herby swears, verifies, and declares under penalty of perjury that the following statements are true in accordance with the terms, definitions, and conditions of Texas Government Code Chapter 2270 ("Chapter 2270"):

1. Affiant is authorized by Company to make this affidavit.
2. Affiant is fully aware of the facts stated in this affidavit.
3. Affiant can read the English language and is over eighteen (18) years of age.
4. The Company does not currently boycott Israel.
5. The Company will not boycott Israel during the term of the Agreement with Austin Independent School District in accordance with Chapter 2270.

Signature of Affiant

Address

SUBSCRIBED AND SWORN TO before me by _____ on ____
_____ 20____.

Notary Public's Signature