

**REQUEST FOR STATEMENTS OF QUALIFICATIONS
FOR
GEOTECHNICAL ENGINEERING AND
CONSTRUCTION MATERIALS TESTING**

June 2019

LULING INDEPENDENT SCHOOL DISTRICT

Luling, Texas

INSTRUCTIONS TO RESPONDENTS

Article I. GENERAL INFORMATION.

1.1 **Request for Statements of Qualifications.**

1.1.1 Pursuant to §2269.058 and §2254.004 of the Texas Government Code, Luling Independent School District ("District") is soliciting qualifications statements from qualified Engineers or consulting firms to provide Geotechnical Engineering, Analysis And Design Recommendations, and Construction Materials Testing for the following two Projects: (1) 2019 Bond Project - New Elementary/Middle School Construction and (2) Athletic Improvements to be funded with District general funds. The Elementary/Middle School will be a two story structure of approximately 83,000 square feet. The budget for construction is approximately \$21,000,000.00. Construction on the Elementary School is expected to commence in January 2020, with completion by August of 2021. The Athletic Improvements will include construction of a new track and field in the existing location, demolition and construction of new press box, lighting installation. Construction of the Athletic Improvements is expected to commence in November of 2020 with completion scheduled for April 2021.

1.1.2 Two separate contracts will be entered into in connection with the services in order to maintain the separate funding sources for the two Projects and the selected Consultant will be required to keep separate accounting and billing records for the two Projects, and invoice the District accordingly. The engineer will be selected using the Request for Qualifications (RFQ) method of procurement in accordance with Tex. Gov't Code § 2269.058 and the Professional Services Procurement Act, Chapter 2254 of the Tex. Gov't Code, specifically Section 2254.004. The selected Respondent will join a Project Team which will include Owner administration, Program Manager and construction contractors, all of whom will be engaged in a cooperative effort to provide Owner with successful and cost-effective solutions.

1.2 **Point-of-Contact/Restriction on Communication.**

1.2.1 Lockwood, Andrews & Newnam, Inc (LAN), has been engaged by the District as its Program Manager, will be the Owner's Representative, and will oversee and provide coordination for this Program. The District reserves the right to add, delete, and modify projects at any time during the course of the Projects, which may result in changes to staff and resources required.

The District designates the following person as its representative and Point-of-Contact for this RFQ:

Paul Ornelas
Program Manager, Lockwood Andrews & Newman, Inc.
Luling Independent School District
8911 N. Capitol of Texas Highway, Bldg. 2
Suite 2300
Austin, Texas 78759
Email: pornelas@lan-inc.com

Respondents shall restrict all contact with the Owner and direct all questions regarding this RFQ, including questions regarding terms and conditions, to the District's Representative specified above. **Do not contact members of the Board of Trustees or other employees of the District. Contact with any of these prohibited individuals after issuance of the RFQ and before selection is made, may result in disqualification of your Qualifications Statement.**

1.3 **Supplemental Information.** District reserves the right to request supplemental information of any and all Respondents to aid the Owner in the evaluation process.

1.4. **Waiver.** By submitting a Qualifications Statement, each Respondent agrees to waive any claim it has or may have against the District, any District's consultants, and their respective trustees, directors, agents and employees, and any reference sources, arising out of or in connection with the administration, evaluation, or recommendation of any Qualifications Statement; waiver of any requirements under the RFQ Documents; acceptance or rejection of any Qualifications Statement; and award of the Contract. either been so fulfilled by the Respondent.

1.5 **Reservation of Rights.** The District reserves the right to accept one or more Qualifications Statements or reject any or all Qualifications Statements received in response to this RFQ, and to waive

informalities and irregularities in the Qualifications Statements received. District also reserves the right to terminate this RFQ, and reissue a subsequent solicitation, and/or remedy technical errors in the RFQ process. This RFQ does not commit the District to enter into a Contract, award any services related to this RFQ, nor does it obligate District to pay any costs incurred in preparation or submission of a proposal or in anticipation of a contract.

Article II. SCOPE OF SERVICES TO BE PROVIDED

2.1 The scope of services for each specialty for which services are sought will generally be as follows:

- 2.1.1 Geotechnical Investigation, Analysis And Engineering. Performance of required geotechnical investigation, analysis and engineering services for the required sites identified in the Contract Documents on behalf of the District, including but not limited to collection of representative subsurface samples of foundation media, soils, aggregate base materials and concrete as necessary for the specific project. Analysis of field and laboratory data collected, performance of engineering analyses of same, and preparation of written reports for the District including boring logs, lab test data, description of the investigation, and recommendations regarding foundation construction and trench and slope recommendations, dewatering recommendations, subgrade excavation, re-grading and back-fill as well as substrate preparation, if any, as applicable to each Project, and design review for both Projects, all as more particularly detailed in Attachments C-1 of the proposed Forms of Agreement attached hereto as **RFQ Exhibit B and RFQ Exhibit B-1**.

- 2.1.2 Materials Testing. Performance of testing, analysis and report conclusions related to the materials provided and workmanship performed by the various construction contractors, or Construction Managers, to ensure compliance with specific Project requirements and construction documents and specifications, including but not limited to, testing, analysis and conclusions related to such items as: Pier Construction, Concrete Mix Design & Testing (cast-in-place & pre-cast), Fill, Backfill, Sub grade & Base, Asphalt Mix Design & Testing, Earthwork/Soil Testing, and other special inspections as may be requested by the Owner's Project representative. Performance of part-time observations and field-testing, on an "on-call" basis, in order to provide required quality control services, engineering technicians to perform observations for the required disciplines and field-testing for associated site improvements. Observations and field-testing will be performed in accordance with instructions of the Owner's Project representative and in compliance with the Texas Engineering Practices Act. Daily reports will be written for each day "on-call" services are provided. During the course of construction, Respondent may also be called upon to provide written reports to Owner's Project representative of all test results, particularly those failing to meet Project specifications. Written reports of findings will be submitted periodically as specified by the Owner's Project representative. Services will include: pier drilling operations; trenching and backfilling; soil stabilization; unity masonry; concrete reinforcing steel and embedded metal assemblies; observation during reinforced concrete placement and casting of cylinders; compression testing of cylinders, structural steel testing; expansion bolt installation; metal roof deck; welding; fireproofing, any and all services detailed in Attachment C-2 of the proposed Forms of Agreement attached hereto as **RFQ Exhibit B and RFQ Exhibit B-1**, and any and all other testing or observation requested by the Owner or Architect.

2.2 All work shall be performed in compliance with the applicable industry standards and as specified in the Construction Documents and Specifications. Engineer shall provide accurate and appropriate information to the construction team as testing progresses sufficient to facilitate accurate design and construction of the Projects. Engineer shall prepare a final report in accordance with the industry standards and requirements or such other industry procedural standards required by the Project Plans and Specifications.

2.3 All Services performed under this Agreement must be conducted in full conformance with the Texas Engineering Practice Act. Persons retained by Consultant to perform the services required by the scope of this RFQ shall be employees or subcontractors of Consultant, and all services shall be performed by qualified personnel under the supervision of a Professional Engineer, licensed or otherwise qualified by the State to practice Engineering. All reports submitted to the District, and any other

deliverables providing a professional opinion, shall bear the Engineer's signature and seal. The Engineer shall attend all meetings any official nature concerning the subject matter of the Engineer's engagement under this Agreement, including but not limited to Scope Meetings, Review Meetings and other meetings as may be required by the Project Representative or the Architect for the Project.

Article III. REQUIRED QUALIFICATIONS.

3.1 Responding firms must have a licensed Engineer on staff, as required by law for the proposed services and prior experience in school construction projects and athletic turf installations.

3.2 Responding firms must have an established in-house or an available laboratory under contract, meeting the standards of the American Standard Testing Materials requirements and is in compliance with requirements of the American Standard Testing Materials E329.

Article IV. QUALIFICATIONS STATEMENTS.

4.1. **Deadline for Submission.** Statements of Qualification must be submitted in sealed opaque envelopes plainly marked: "Qualifications Statement: Geotechnical & Materials Testing – Elementary/Middle School and Athletic Improvements" and shall bear the name and address of the Respondent. Responses must be received at *the following address*:

Luling Independent School District
C/O Paul Ornelas Program Manager,
Lockwood Andrews & Newman, Inc.
8911 N. Capitol of Texas Highway Bldg., 2 Suite 2300
Austin, Texas 78759

not later than Thursday, July 11, 2019 at 2 p.m. local time.

Responses submitted prior to the above time and date may be modified provided such modifications are sealed and received at the designated location, prior to the time and date set for submission of Responses. Qualification Statements received after the deadline will NOT be accepted and will be returned unopened to the Respondent. **NOTE: Responses, if hand-delivered will only be accepted at the location above, between the hours of 8 a.m. and 4 p.m., Monday through Friday, on business days.**

4.2 **Questions.** Questions concerning this RFQ shall be directed to the Owner's Program Manager in writing by mail at the address above or via e-mail at: ponelas@lan-inc.com. Verbal questions and explanations are not permitted. All questions are due by Wednesday, July 3, 2019 @ 2:00 p.m. local time. Answers to questions will be posted on Owner's Website by Monday, July 8, 2019 @ 2:00 p.m. local time. The Owner's website may be accessed at: <http://www.luling.txed.net> and answers to questions may be found by visiting the Departments>Business Services>RFP/RFQ Postings section of the site. Communication with the Owner's Representative after the deadline for questions is not permitted

4.3 **Addenda.** Changes in this RFQ or official interpretations of the Contract Documents will be made only by written addenda. Receipt of all addenda issued by Program Manager, if any, shall be acknowledged in each Respondent's Statement of Qualifications, and shall constitute a part of the final contract. All addenda issued in connection with this RFQ will be posted to the District's website and may be accessed as described in the previous paragraph. It is the duty of each Respondent to obtain any and all addenda and the District's website should be checked prior regularly and in any event prior to submission to assure that all Addenda have been addressed in Respondent's Statement of Qualifications.

4.4 **Texas Public Information Act.** The District strictly complies with the Texas Public Information Act. Some of the information you may provide in your Statement of Qualification may contain commercial or financial information which you contend is privileged or confidential by statute, or which you feel may cause substantial competitive harm to your business if disclosed by the District to a third-party. You may be entitled to protect this information at the time the request is made for disclosure; however, you will need to consult your legal counsel to assure that this kind of information, if included, is properly marked as confidential prior to submission. If any part of your request is marked confidential, the District will use best efforts to notify you of a request for this information so that you may assert any protections directly to the Secretary of State. The District will not be responsible for asserting any argument on behalf of any Respondent.

4.5. **Form of Submission.** To achieve a uniform review process and obtain the maximum degree of comparability, it is required that Responses be organized in the manner specified in this paragraph. Three (3) sets of the Qualifications Statement are required. The Response must have one (1) original set. This set should be labeled "ORIGINAL" and contain original signatures. The remaining two (2) sets are to be copies of the original and are to be labeled "COPY." The Statement Of Qualifications should be in the format of a written report and should be prepared on 8-1/2" x 11" sheets (single-sided) and bound with coil binding or by another method to allow the statement to lay flat. The sections should be divided by tabs corresponding to the categories below. Respondents are expected to examine this RFQ carefully, understand the terms and conditions for providing the services listed herein and respond completely. FAILURE TO COMPLETE AND PROVIDE ANY OF THE ABOVE ITEMS MAY RESULT IN THE RESPONDENT'S PROPOSAL BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION. The Qualifications Statement shall be submitted in the order set forth below:

4.4.1 COVER LETTER

Submit a cover letter, prepared on the letterhead of the Respondent, which includes a brief statement of interest, availability, intent to perform the services requested, summarizes the relevant characteristics that distinguish the Respondent's qualifications to provide the services requested for the Projects and provide signature of an authorized officer of the firm who has legal authority in such matters.

4.4.2 **RESPONDENT'S GENERAL QUALIFICATIONS QUESTIONNAIRE.** Complete and submit the Proposer Qualification General Questionnaire, **RFQ Exhibit A.**

4.3.2 **THE FORM OF AGREEMENT AND EXCEPTIONS.** A proposed Form of Agreement showing the general form, terms and provisions of the contract for the services requested is attached as **RFQ Exhibits B and B-1.** By responding to this RFQ, the Respondent agrees to these standard contract provisions. **Respondent must delineate any comments and include an explanation for the change in a separate document attached to its Statement of Qualifications; otherwise Respondent is deemed to have accepted the form of the Agreement as written.** The final contract is subject to review and approval of the District's legal counsel.

4.3.3 **CONFLICT OF INTEREST QUESTIONNAIRE.** Complete, sign and submit the Conflict of Interest Questionnaire attached as **RFP Attachment C.** Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the District shall file a completed Conflict of Interest Questionnaire (CIQ) with the District. The CIQ will be submitted as part of the response to a Request for Qualifications. Please consult your own legal advisor if you have questions regarding the statute or form.

4.3.4 **FELONY CONVICTION NOTIFICATION.** Complete, sign and submit the Felony Conviction Notification Form, **RFQ Exhibit D.**

4.3.5 **NON-COLLUSION AFFIDAVIT.** Complete, sign and submit the Non-Collusion Affidavit, **RFQ Exhibit E.**

4.3.6 **SIGNATURE PAGE.** Complete, sign and submit Signature Page, **RFQ Exhibit F.**

The Signature Page must be signed by a person, or persons, authorized to bind the entity, or entities, submitting the proposal. Responses signed by a person other than an officer of the company or partner of the firm shall be accompanied by evidence of authority. Qualifications Statements shall correctly reveal, disclose, and state the true and correct name of the individual, proprietorship, corporation, and/or partnership (clearly identifying the responsible general partner and all other partners who would be associated with the contract, if any). No nicknames, abbreviations (unless part of the legal title), shortened or short-hand, or local "handles" will be accepted in lieu of the full, true and correct legal name of the entity. These names shall comport exactly with the corporate and franchise records of the Texas Secretary of State and Texas Comptroller of Public Accounts. Individuals and proprietorships, if operating under other than an individual name, shall match with exact Assumed Name filings. Corporate Respondents and limited liability company Respondents shall include the 11-digit Comptroller's Taxpayer Number on the signature page of the proposal. If an entity is found to have incorrectly or incompletely stated its name or failed to fully reveal its identity on the signature page of its proposal, the

Superintendent shall have the discretion, at any point in the contracting process, to suspend consideration of the proposal.

Article V. SELECTION CRITERIA.

5.1 Evaluation will be based on the Respondent’s Qualifications Statement provided in response to this RFQ. Within forty-five (45) days after the deadline for proposal submissions, the District will evaluate the submitted Qualifications Statements and will evaluate and rank each response submitted based on the following evaluation criteria:

Experience on Similar Projects.	Demonstrated experience in providing geotechnical and materials testing services required in this RFQ in connection with projects similar to each of those for which the services are sought, and overall experience of the lead engineer in with the range of services required.
Reputation with Prior Clients	Reputation for commitment to quality performance, clear reporting and communication with the Owner and other Project Team Members. The firm’s overall plan for meeting the District’s needs and requirements, management ability and demonstrated ability to consistently provide quality service to its clients.
Resource Availability and Key Personnel	Demonstrated ability to adequately serve its clients and comply with relevant scheduling constraints on past projects, including adequate key personnel, technical staff and the spectrum of support services and resources to be offered to District. Ability to appropriately staff, manage and oversee the scopes of work required in this RFQ.
Reputation in the Design Professional Community and Post-Construction Follow-Through	Reputation in the Design Professional Community for thoroughness and accuracy of testing and reporting, recommendations and follow-through/responsiveness in consulting with the design professional during design and in the event of a post-construction issue.
Firm Stability	Respondent demonstrates a stable history through years in business, sound financial standing, lack of complaints/legal judgments, consistent repeat business with former clients.

Article VI. AWARD OF CONTRACT.

6.1. The process for selection shall be as follows:

6.1.1. On the proposal due date, the District will receive, publicly open, and read aloud the names of the Respondents submitting Qualifications Statements. Within a reasonable time, not to exceed thirty (30) days after the date of opening the responses, a committee consisting of the Superintendent and any other member appointed by the Superintendent (“Evaluation Team”) will evaluate and rank each Statement of Qualifications submitted in relation to the criteria set out in this Request for Qualifications. The Board will have final approval of the Evaluation Team’s rankings.

6.1.2. The recommended rankings of the Evaluation Team will be presented for approval of such rankings by the Board of Trustees or re-ranking by the Board based upon the same criteria set out in this RFQ. The Board will then authorize the Superintendent, or her designee to negotiate the final Agreements for the two Projects for a fair and reasonable fee with the first ranked Respondent. To the extent that an acceptable form of the Agreement cannot be reached by the District with the first ranked Respondent, the District Representative may formally end negotiations in writing with that Respondent and proceed to the next ranked Respondent, and so on in the order of the Board ranking until a contract is reached or all Qualifications Statements are rejected.

**RFQ EXHIBIT A
RESPONDENT QUESTIONNAIRE**

SECTION A - GENERAL INFORMATION

1. **Company Information:** Provide the following information regarding your business (firm, organization or company).

Name/Name of Organization/Company: _____

Address _____

State: _____ Zip Code: _____ Telephone: _____ Fax: _____

Please attach the following information regarding business Organization (Corporation, Partnership, Individual, Joint Venture, Other): (1) the state where chartered; (2) names of all principals (officers, directors, partners, general or managing partners etc); and (3) if your organization was chartered outside of the state of Texas, a statement regarding whether are you registered to do business in Texas.

2. **Contact Information:** List the person who the District may contact concerning your proposal or setting dates for meetings.

Name: _____

Address _____

State: _____ Zip Code: _____ Telephone: _____ Fax: _____

3. Does your business anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months that may affect the organization's ability to carry out its proposal?

Yes No

4. Is your business authorized to do business in Texas?

Yes No

5. Provide any other names under which your business has operated within the last 5 years.

6. **Debarment/Suspension Information:** Has the business or any of its principals been debarred or suspended from contracting with any public entity?

Yes No

If yes, identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

8. **Bankruptcy Information:** Have you or the business (under any name) ever been declared bankrupt or filed for protection from creditors under state or federal proceedings?

Yes No

If yes, state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets.

9. **Default.** Have you or the business defaulted and/or been removed from any Project in the last ten (10) years.

Yes No

If yes, state the name and address of the individual or entity with whom the Project was contracted, the name of the Project, the date of removal and the reason for removal.

10. **Insurance.** The Agreements (**RFQ Exhibits B and B-1**) which the Respondent will be asked to enter, contain the insurance requirements for these Projects. Only the selected Respondent will be expected to provide Certificates of Insurance however, for submittal purposes the Respondent is asked to confirm by its initials below that **Respondent is able to meet the insurance requirements as specified in the Agreements attached to the RFQ Exhibits B and B-1.**

_____ Initials of Authorized Respondent.

SECTION B – REQUIRED QUALIFICATIONS.

1. Please provide the name and other information below regarding the Professional Engineer, licensed in Texas who will be leading the team or teams for each of the Projects and an estimate of the number of Projects on which this individual and/or your firm have provided geotechnical or materials testing services similar to those requested herein:

A. Elementary/Middle School Project

Name: _____

Address _____

State: _____ Zip Code: _____ Telephone: _____ Fax: _____

License Number or other License Identifier: _____

- Number of Projects on which this individual and/or your firm have provided geotechnical services similar to those requested herein in the last five (5) years.
- Number of Projects on which this individual and/or your firm have provided materials testing services similar to those requested herein in the last five (5) years.

B. Athletic Improvements Same Engineer as above.

Name: _____

Address _____

State: _____ Zip Code: _____ Telephone: _____ Fax: _____

License Number or other License Identifier: _____

- Number of Projects on which this individual and/or your firm have provided geotechnical services similar to those requested herein in the last five (5) years.
- Number of Projects on which this individual and/or your firm have provided materials testing services similar to those requested herein in the last five (5) years.

2. Please confirm that your firm has an established in-house or an available laboratory under contract, meeting the standards of the American Standard Testing Materials requirements and is in compliance with requirements of the American Standard Testing Materials E329.

Yes No

SECTION C – PAST EXPERIENCE ON SIMILAR PROJECTS AND PRIOR CLIENT REPUTATION

1. Geotechnical – Building Structures.

A. Generally describe your organization's background and experience in providing geotechnical testing, analysis, evaluation and recommendations for structurally sound foundations for school buildings of similar size to the one at issue here, and other school facilities to be constructed for public entities.

B. Identify three (3) significant public school district clients for which the Respondent has provided geotechnical testing, analysis, evaluation and prepared structural recommendations for foundation construction of building of a similar size to the one at issue here, within the past five (5) years. Include a brief description of the services provided, the dates of service, and a point of contact with name, address, and current fax, email, and phone number.

2. **Construction Materials Testing - Building Structures.**

A. Generally describe your organization's background and experience in providing construction materials testing and observation during construction of school buildings of similar size to the one at issue here, and/or other school facilities to be constructed for public entities.

B. Identify three (3) significant public school district clients for which the Respondent has provided construction materials testing and observation during construction of school buildings of similar size to the one at issue here, within the past five (5) years. Include a brief description of the services provided, the dates of service, and a point of contact with name, address, and current fax, email, and phone number.

3. **Geotechnical – Athletic Track/Field Installations**

A. Generally describe your organization's background and experience in providing geotechnical engineering, including testing, soils evaluation and analysis and provision of recommended processes for preparation and installation of a structurally sound stable sub-grade for the track/turf surface as well as effective underground drainage to underlay athletic field and/or turf installations.

B. Identify three (3) significant public school district clients for which the Respondent has provided geotechnical engineering, including testing, soils evaluation and analysis and provision of recommended processes for preparation and installation of a structurally sound stable sub-grade for the track/turf surface as well as effective underground drainage to underlay athletic field and/or turf installations within the past five (5) years. Include a brief description of the services provided, the dates of service, and a point of contact with name, address, and current fax, email, and phone number.

4. **Construction Materials Testing - Athletic Track/Field Installations**

A. Generally describe your organization's background and experience in providing construction materials testing and observation during enhanced soil preparation, scraping and/or excavation of site, backfill, and preparation of sub-grade for acceptance of turf/track surface in connection with athletic field and/or turf installations.

B. Identify three (3) significant public school district clients for which the Respondent has provided construction materials testing and observation during preparation and installation of the sub-grade for the track/turf surface and/or underground drainage to underlay athletic field and/or turf installations within the past five (5) years. Include a brief description of the services provided, the dates of service, and a point of contact with name, address, and current fax, email, and phone number.

SECTION D – RESOURCE AVAILABILITY AND KEY PERSONNEL

1. Provide information on available resources, including total number of employees in your organization, number and location of offices, equipment available to support each Project.
2. Describe the major projects your organization currently has **in progress**, giving the name and location of project, your role on the Project, and any describe any impact it might have on your ability to perform the work requested in this RFQ.
3. Identify the number and professional qualifications (to include licenses, certifications, associations) of key staff to be assigned to **each** Project (other than the lead engineer previously identified) and relevant experience on projects of similar size and scope.

SECTION E – POST-CONSTRUCTION FOLLOW-UP

1. Provide a list of any of the athletic turf or track installations on which you have performed the geotechnical testing and analysis, for which you are aware of any issues which arose following completion (whether within or outside of warranty) and if a determination of the cause of the problem was made, what that determination was.
2. If the determined cause was alleged to be, in whole or in part, related to the your geotechnical engineering, including testing, soils evaluation and analysis and provision of recommended processes for foundation design or preparation and installation of a the sub-grade for drainage for a track/turf surface, describe your involvement with resolving the claim and your interaction during the process with the client and the design professional.

3. Please provide the names address, and current email and phone number of two (2) Architects with whom you have worked in the last five (5) years on a project team who can provide a reference for your thoroughness, accuracy, reporting, recommendations and follow-through/responsiveness in consulting with them during design and responsiveness in connection with a post-construction issue.

SECTION E – FIRM STABILITY

1. Identify two financial references which can verify the financial stability of the firm. One of these references should be your current banking organization. For each, provide a point of contact with name, address, and current fax, email, and phone number.

**RFQ EXHIBIT B
PROFESSIONAL SERVICES AGREEMENT
FOR CONSTRUCTION MATERIAL TESTING SERVICES FOR
NEW ELEMENTARY SCHOOL**

This Agreement is made and entered into by and between the **LULING INDEPENDENT SCHOOL DISTRICT** ("District"), an Independent School District and political subdivision of the State of Texas and **[GEOTECH CONSULTANT]**, by and through its designated officer(s) pursuant to its by-laws or a resolution of its Board of Directors ("Consultant"), both of which may be referred to herein collectively as the "Parties", to provide Geotechnical Investigation, Analysis and Engineering Services and Construction Materials Testing as provided herein for the following Project:

2019 Bond Project

Construction of New Two-Story Elementary School (1st Grade to 5th Grade) containing approximately 83,000 square feet at site of Leonard Shanklin Elementary School located at 122 E. Houston, Luling, TX 78648 to replace and combine Luling Primary School and Shanklin Elementary

Renovation 2003-era classroom building at 5th Grade Campus located at the Shanklin Elementary School site to house Pre-Kindergarten Classrooms.

Renovations at Gilbert Gerdes Junior High School located at 214 Bowie Street, Luling, TX 78648.

IN CONSIDERATION of the mutual covenants, terms, conditions, privileges and obligations herein contained, District and Consultant do hereby agree as follows:

I. PERIOD OF SERVICE

1.1 This Agreement shall take effect upon execution by both Parties and continue in full force and effect for the period required for completion of the duties as set forth in the Scope of Services. Performance for the Project. Services shall commence upon issuance of a Notice to Proceed by the District's Representative, and shall terminate upon substantial completion of Consultant's duties as set forth in the Scope of Services and written acceptance by the District of the work product and services rendered, unless extension or earlier termination shall occur pursuant to any of the provisions hereof.

1.2 If funding the Project is not appropriated during the time this Agreement is entered into, District retains the right to terminate this Agreement at the expiration of each of the District's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

II. SCOPE OF SERVICES

2.1 Consultant, in consideration for the compensation herein provided, shall render Geotechnical Investigation, Analysis and Engineering Services and Construction Materials Testing services in connection with the Projects listed above. The Consultant's work will consist of:

2.1 Consultant, in consideration for the compensation herein provided, shall render Geotechnical investigation, analysis and engineering services and Construction Materials Testing services in connection with the Projects listed above. The Consultant's work will generally consist of the following broad categories of work which will be more particularly defined in the Engineer's Proposals for Geotechnical Investigation, Analysis and Engineering Services and Construction Materials Testing Services in connection with the Projects listed above. attached hereto as **Attachments A and B**, respectively:

2.1.1 Geotechnical Investigation, Analysis And Engineering.

2.1.1.1. **Investigation.** Performance of comprehensive geotechnical investigation and analysis of the relevant sites identified in the Contract Documents for each Project in order to develop a detailed understanding of the site's geotechnical conditions, including its general soil, substrate and groundwater characteristics.

2.1.1.2 **Collection and Logging of Samples.** Conduct subsurface exploration and collection of representative samples (test borings) of foundation media, soils, aggregate base materials and concrete, as necessary, for laboratory analysis. The numbers, depths and

locations will be determined as deemed appropriate in the Engineer's professional judgement. Create a log of exploratory borings summarizing the soil conditions encountered and the results of the laboratory testing as well as a plan indicating the number and location of the borings and elevations related to a common benchmark or datum, and depth. All field work be conducted and logged by an experienced geotechnical engineer or Sr. field technician.

2.1.1.3 Laboratory and Field Testing. Conduct laboratory and field testing of the collected samples to measure pertinent soil parameters or engineering properties, including hazmat in soil in accordance with American Society for Testing and Materials (ASTM) procedures, which may include but will not be limited to the following: Moisture-Density Relationship testing, Atterberg Limits Determination, Sieve Analysis; In Place Density Testing and Laboratory Testing; Concrete Compressive Strength Testing, Asphalt cores of in-place asphalt; Asphaltic Concrete Extraction, Gradation, Bitumen Content, Stability, Laboratory Density, and Specific Gravity.

2.1.1.4 Analysis of Information. Analyze the information developed by investigation or otherwise available to the Engineer, including those aspects of the subsurface conditions which may affect design and construction of proposed structures.

2.1.1.5 Written Report. Prepare and submit written report to the District, providing all boring logs, lab test data, a description of the investigation, a description of the existing surface and subsurface conditions. The report should include all laboratory determinations of soil properties and probable effect of soil conditions on construction of applicable structure to be built on the specified site, setting out Engineer's professional evaluation and recommendations, highlighting necessary areas of consideration in design preparation and construction, including some or all of the following:

- A. Foundation support of the structures and slabs, including soil bearing pressures, bearing elevations and anticipated settlement.
- B. Suitable foundation systems for structure and required excavation, backfill soil preparation and drainage infrastructure, as required.
- C. Soil material and compaction requirements for site fill, construction backfill, for the support of structure and pavement, as well as recommended soil preparation based on findings and professional analysis.
- D. Suitability of site excavated material for use as fill or backfill material and general availability of suitable off-site fill, if required.
- E. Backfill and compaction requirements for excavated material and for engineered fill, if any.
- F. Procedures for subgrade preparation and criteria for testing subgrade preparations for compliance with the specified procedures
- G. Management of groundwater for design of structures and pavements, as appropriate.
- H. Appropriate provisions for the control and drainage of surface water, as appropriate.
- I. Other evaluations and recommendations deemed necessary and advisable in the professional opinion of the Engineer and approved by the District in writing.

2.1.2 Independent Construction Materials Testing.

2.1.2.1 Performance of testing, analysis and report conclusions related to the materials provided and workmanship performed by the various construction contractors, to ensure compliance with specific Project requirements and the Construction Documents and Specifications, including but not limited to, testing, analysis and conclusions related to such items as: Pier Construction, Concrete Mix Design & Testing (cast-in-place & pre-cast), Fill, Backfill, Sub grade & Base, Asphalt Mix Design & Testing, Earthwork/Soil Testing, and other special inspections as may be requested by the District's Project representative.

2.1.2.2 Performance of observations and field-testing, on an “on-call” basis, in order to provide required quality assurance services. Engineering technicians shall perform observations for the required disciplines and field-testing for associated site improvements. Observations and field-testing will be performed in accordance with instructions of the District’s Project representative and in compliance with the Texas Engineering Practices Act. Daily reports will be written for each day “on-call” services are provided. During the course of construction, Written reports of findings will be submitted periodically as specified by the District’s Project representative. The Services shall be performed in conformance with the standards of care and quality practiced by engineering professionals experienced materials testing and quality assurance generally on projects similar to the Project. During the course of construction, Consultant will provide written reports on the Project, to the District’s representative of all test results, particularly those failing to meet project specifications. Written reports of findings will be submitted periodically as specified by the District’s representative.

2.2 A regular duty of the geotechnical engineer will be to meet with District for evaluations of Project progress. Budget and time constraints will be important factors in any discussion and geotechnical engineers will be expected to know and provide a variety of important information. Whether acting in its role as Geotechnical Engineer or Materials Testing Consultant, shall be represented by a professional engineer licensed to practice in the State of Texas or an Engineer-In-Training subject to the supervision of a professional engineer, at meetings of any official nature concerning the Project, including but not limited to Scope Meetings, Review Meetings and other meetings as may be required for the Project. All submittals shall carry the signature and seal; or, in the case of progress submittals or incomplete submittals, an appropriate disclaimer with the responsible professional engineer’s name and license number and, adjacent thereto, the date of the submittal. All Services performed under this Agreement must be conducted in full conformance with the Texas Engineering Practice Act. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or subcontractors of Consultant.

2.3 Consultant shall complete all work on the Project in compliance with this Agreement, in a timely fashion consistent with the construction schedule and agrees to staff the Project with sufficient necessary, qualified personnel to the Project, in order not to delay or disrupt the progress of the Project.

III. COORDINATION WITH THE DISTRICT

3.1 Consultant shall hold periodic conferences with District’s representative, so that the Project, as developed, will have the full benefit of District’s experience and knowledge of existing needs and facilities and be consistent with the District’s current policies and standards. The District shall make available, for Consultant’s use, all existing plans, maps, field notes, statistics, computations, and other data in its possession relative to existing facilities and to this Project, if any, as may be requested by Consultant at no cost to Consultant, but does not warrant the accuracy of such documents.

3.2 The District’s representative shall act on behalf of District with respect to the work performed under this Agreement, and shall have complete authority to transmit instructions, receive information, and interpret and define District’s policies and decisions with respect to materials, equipment elements and systems pertinent to Consultant’s services.

3.3 The District shall provide written notice to the Consultant of any errors or omissions discovered in the Consultant’s services, or performance, or of any development that affects the scope or timing of Consultant’s services.

3.4 Consultant shall complete all applications and furnish all required data compiled by Consultant for District’s use in obtaining any permits or approvals from governmental authorities having jurisdiction over the Projects, as may be necessary for completion of the Project. Consultant shall not be obligated to develop additional data, prepare extensive reports or appear at hearings in order to obtain said permits or approvals, unless compensated therefore as provided in Article IV, COMPENSATION.

IV. COMPENSATION

4.1 For and in consideration of the services to be rendered by Consultant, District shall pay Consultant a fee not to exceed that set forth in this Article IV, Compensation. Nothing contained in this Agreement shall require District to pay for any unsatisfactory work, as determined by District’s representative, or for work that is not in compliance with the terms of this Agreement. The District shall

not be required to make any payments to Consultant at any time Consultant is in default under this Agreement.

4.2 Basis For Compensation and Invoicing.

4.2.1 The not to exceed fee for Consultant's base work as defined in the Scope of Services for Geotechnical Testing and Analysis shall not exceed the sum of _____ (\$_____) ("Geotech Fee"). The Consultant's hourly rates for Geotech services are set out in the Schedule of Fees for Geotechnical Investigation, Analysis and Engineering Services and associated expense reimbursement rates are set out in **Attachments A-1 and B-1**, respectively, and are incorporated herein by reference.

4.2.2 The not to exceed fee for Consultant's base work as defined in the Scope of Services and detailed in its Proposal for and Construction Materials Testing ("MTS") shall not exceed the sum of _____ (\$_____) ("MTS Base Fee"). The Consultant's hourly rates for MTS services are set out in the Schedule of Fees for Professional MTS Services and associated expense reimbursement rates are set out in **Attachments A and B**, respectively, and are incorporated herein by reference.

4.2.3 Consultant will submit invoices monthly for MTS and Geotechnical Services performed and completed and reimbursable expenses properly incurred and documented, which have not been included on previous invoices based upon the Schedule of Fees for Professional Services attached hereto as **Attachments A-1 and B-1**, respectively. Payment of invoices shall be due and payable upon not later than thirty (30) days after the District Superintendent's receipt of Consultant's invoice for services, which has been reviewed and approved by the Project Representative. Payment shall be remitted to _____. Interest shall accrue on overdue balances in accordance with the provisions of the Texas Prompt Payment Act. The scope and quantity of the services provided will be dependent upon services actually authorized and required by the District and performed by the Consultant. Charges will be assessed only for actual services rendered up to the not to exceed fees stated herein.

4.3 Modifications. Consultant and District acknowledge that the MTS and Geotech Fees, as set out above, has been established based upon the total estimated costs of services to be rendered under the Agreement. Compensation for additional services shall be subject to renegotiation in accordance with Section 4.4 below, and approved by the Board of Trustees.

4.4 Additional Professional Services. Consultant may be required to perform the additional services in connection with this Agreement including, but not limited to, the following:

4.4.1 Acting as an expert witness in any litigation with third parties, arising in connection with the Project, including the preparation of engineering data and reports and providing testimony as necessary.

4.4.2 Services after the completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantee called for in any contract for the Project.

4.4.3 Additional copies of reports, drawings and specifications over the number specified in this Agreement.

4.5 Compensation for Additional Professional Services. Compensation for such additional services shall be subject to prior approval of the District and approval of the Board of Trustees if additional funds not provided for in the initial budget are required to cover such services. Should Consultant be directed in writing by District's representative to perform these services, compensation shall be paid by District to Consultant as authorized in writing by District's representative, based on one or more of the following:

- (1) Based upon the hourly rates set out in **Attachment A-1 and B-1**.
- (2) Lump sum per item of work – to be negotiated.
- (3) Lump sum – to be negotiated.

V. OWNERSHIP AND RETENTION OF DOCUMENTS AND ACCESS TO LAB RESULTS

5.1 Upon completion or termination of the Project, or upon request by the District, all documents and information, in whatever form, given to, prepared or assembled by the Consultant in connection with its

performance of its duties under this Agreement shall become the sole property of the District and shall be delivered at no cost to the District without restriction on future use. Documents and information covered by this paragraph shall include, but not be limited to, reports, test results, field notes and other data. The District shall have free and immediate access to all such information at all times during the term of this Agreement with the right to make and retain copies documents, notes and data, whether or not the Project has been completed. Prior to surrender of the documents and information, Consultant may make copies of any and all documents for its files, at its sole cost and expense. Consultant shall not be liable for any unauthorized reuse or modification of its documents, reports or other work products.

5.2 At any time during the Project, upon reasonable notice and during normal business hours, the District shall have the right to unrestrained direct access to laboratories and testing facilities used by Consultant for work performed by Consultant under this Agreement; and the District shall have the unrestricted right to obtain original or duplicate copies of reports and testing results directly from the lab or testing facility used by Consultant.

5.3 The Consultant agrees to maintain all books, records, testing samples, and reports required under this contract for the minimum period required by state law for record retention, but in no event less than ten (10) years after final payment is made and all pending matters are closed. Prior to the destruction or disposal of any records, testing samples, or reports, the Consultant will notify the District within 30 days of the scheduled destruction or disposal of said records, samples, or reports and give the District an opportunity to obtain possession of, retain and store same at its own cost. In addition, the Consultant shall maintain an acceptable cost accounting system during the term of this Agreement. The Consultant agrees to provide the District, or any of their duly authorized representatives, access to any books, documents, papers and records of the Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions.

5.4 Consultant shall notify District, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that District will process and handle all such requests.

VI. TERMINATION OF AGREEMENT

6.1 Termination Without Cause.

6.1.1 This Agreement may be terminated by District without cause, prior to District's representative giving Consultant written Notice to Proceed, should District's representative, in its sole discretion, determine that it is not in District's best interest to proceed with this Agreement. Such notice shall be provided in accordance with the notice provisions contained in this Agreement, and shall be effective immediately upon delivery to the Consultant.

6.1.2 This Agreement may be terminated by the District at any time after issuance of the District's representative's Notice to Proceed, either for the District's convenience or because of Consultant's failure to fulfill the contract obligations. Upon receipt of such notice, services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the District.

6.1.3 If the termination is for the convenience of the District, and following inspection and acceptance of Consultant's services properly performed prior to the effective date of termination, an equitable adjustment in the contract price shall be made for work properly performed prior to notice of termination and receipted by the District. Consultant shall not, however, be entitled to lost or anticipated profit on unperformed services, should District choose to exercise its option to terminate, nor shall Consultant be entitled to compensation for any unnecessary or unapproved work performed during time between the issuance of the District's notice of termination and the actual termination date.

6.1.4 If the termination is due to Consultant's failure to fulfill its obligations, the District may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Consultant shall be liable to the District for any additional cost occasioned to the District thereby.

6.1.5 If, after notice of termination for failure to fulfill contract obligations, it is determined that the Consultant had not so failed, the termination shall be deemed to have been effected for the convenience of the District. In such event, an equitable adjustment in the contract price shall be made as provided in paragraph 6.1.3 of this clause.

6.1.6 The rights and remedies of the District provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

6.1.7 This Agreement may be terminated by the Consultant, at any time after issuance of the District's representative's Notice to Proceed, upon ninety (90) calendar days written notice provided in accordance with the Notice provisions contained in this Agreement.

6.2 Defaults With Opportunity for Cure. Should Consultant fail, as determined by the District's representative, to satisfactorily perform the duties set out in Article II. SCOPE OF SERVICES; or comply with any covenant herein required, such failure shall be considered an Event of Default. In such event, the District shall deliver written notice of said default, in accordance with the notice provisions contained in this Agreement, specifying the specific Events of Default and the action necessary to cure such defaults. Consultant shall have ten (10) calendar days after receipt of the written notice to cure such default. If Consultant fails to cure the default within such cure period, or take steps reasonably calculated to cure such default, District shall have the right, without further notice, to terminate this Contract in whole or in part as District deems appropriate, and to contract with another Consultant to complete the work required by this Agreement. District shall also have the right to offset the cost of said new agreement with a new Consultant against Consultant's future or unpaid invoice(s), subject to any statutory or legal duty, if any, on the part of District to mitigate its losses.

6.3 Termination For Cause. Upon the occurrence of one (1) or more of the following events, and following written notice to Consultant given in accordance with the notice provisions contained in this Agreement, District may immediately terminate this Contract, in whole or in part, "for cause":

6.3.1 Consultant makes, directly or indirectly through its employees or representatives, any material misrepresentation or provides any materially misleading information to District in connection with this Agreement or its performance hereunder; or

6.3.2 Consultant violates or materially fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this Agreement, except those events of default for which an opportunity to cure is provided herein; or

6.3.3 Consultant fails to cure, or initiate steps reasonably calculated to cure, a default as required by this Agreement, within the time period required for cure; or

6.3.4 Consultant violates any rule, regulation or law to which Consultant is bound or shall be bound under the terms of this Agreement; or

6.3.5 Consultant attempts the sale, transfer, pledge, conveyance or assignment of this Agreement contrary to the terms of this Agreement.

6.3.6 Consultant ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Contract shall continue) and such petition is not dismissed within forty-five (45) days of filing; or if a receiver, trustee or liquidator is appointed for it, or its joint venture entity, or any substantial part of Consultant's assets or properties.

6.4 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

6.5 Orderly Transfer Following Termination. Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to District or to such person(s) or firm(s) as the District may designate, at no additional cost to District. Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant, or any of its subcontractors, pursuant to this Agreement. All completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced, or provided to Consultant, in connection with the services rendered by Consultant under this Agreement, regardless of storage medium, shall be transferred to District. Such record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents.

6.6 Claims for Outstanding Fees. Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to District its claims, in detail, for the monies owed by District for services performed under this Agreement through the effective date of termination. **Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of District and constitute a waiver by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.**

6.7 Termination Not Sole Remedy. In no event shall District's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of District's remedies, nor shall such termination limit, in any way, at law or at equity, District's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

VII. SUSPENSION OF WORK UNDER AGREEMENT

7.1 Right of District to Suspend. District may suspend this Agreement for any reason, with or without cause, upon the issuance of written Notice of Suspension in accordance with the Notice provisions contained in this Agreement. Such suspension shall take effect upon the date specified in such notice; provided, however, such date shall not be earlier than the tenth (10th) day following receipt by Consultant of said notice. The Notice of Suspension will set out the reason(s) for the suspension and the anticipated duration of the suspension, but will in no way guarantee the total number of days of suspension.

7.2 Consultant's Right to Terminate In Event of Suspension of Agreement. In the event such suspension exceeds one hundred and twenty (120) calendar days, Consultant shall have the right to terminate this Agreement. Consultant may exercise this right to terminate by issuing a written Notice of Termination to the District, delivered in accordance with the Notice provisions contained in this Agreement after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by District and such termination shall be subject to all the requirements set out in Paragraphs 6.5 and 6.6 above, related to the Orderly Transfer and Fee Payment.

7.3 Procedures Upon Receipt of Notice of Suspension.

7.3.1 Upon receipt of a notice of suspension and prior to the effective date of the suspension, Consultant shall, unless otherwise directed, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement.

7.3.2 Consultant shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

7.3.3 Copies of all completed or partially completed studies, plans and other documents prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to the District but shall be retained by Consultant until such time as Consultant may exercise the right to terminate.

7.3.4 During the period of Suspension, Consultant shall have the option to at any time submit the above referenced statement to the District for payment of any unpaid portion of the prescribed fee for services which have actually been performed to the benefit of the District under this Agreement, adjusted for any previous payments of the fee in question.

7.3.5 In the event Consultant exercises its right to terminate this Agreement at any time after the effective Suspension date, Consultant shall submit, within forty-five (45) calendar days after receipt by District of Consultant's notice of termination (if he has not previously done so) the above referenced statement showing in detail the services performed under this Agreement prior to the effective date of suspension. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of District and constitute a waiver by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.3.6 Upon the above conditions being met, the District's review of the submissions and finding the claimed compensation to be appropriate to the terms of this Agreement, the District shall pay Consultant that portion of the agreed prescribed fee for those as yet uncompensated services actually

performed under this Agreement to the benefit of the District, adjusted for any previous payments of the fee in question.

VIII. INSURANCE REQUIREMENTS

8.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish an original completed Certificate of Insurance to District's representative, which shall be clearly labeled with the Project name and which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. District shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to District's representative, and no officer or employee shall have authority to waive this requirement.

8.2 The District reserves the right to review the insurance requirements of this Article during the effective period of this Contract and to modify insurance coverage and limits when deemed necessary and prudent by the District based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance will the District allow modification whereupon the District may incur increased risk.

8.3 Consultant's financial integrity is of interest to District, therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by District, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, except for professional liability, by companies authorized, approved or admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to District, in the following types and amounts:

<u>Worker's Compensation:</u> (Including Waiver of Subrogation Endorsement)	All liability arising out of Consultant's employment of workers and anyone for whom Consultant shall be liable for Worker's Compensation claims. Worker's Compensation is required and no "alternative" form of insurance shall be permitted.
<u>Employer's Liability:</u>	\$1,000,000.00
<u>Commercial General Liability:</u>	
Occurrence	\$1,000,000.00
Aggregate	\$2,000,000.00
Personal Injury	\$1,000,000.00 each person
<u>Automobile Liability:</u>	\$1,000,000.00 combined single limit
<u>Professional Liability:</u>	\$1,000,000 per claim 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, malpractice, error or omission in professional services. If written on a claims made basis, Consultant shall provide coverage for an additional 25 months after the completion date of the contract.

8.4 The General Liability and Automobile issued in the name of Consultant shall also name the District as an additional insured. The coverage afforded to the additional insured under the policy or policies shall be primary insurance and provide any defense provided by the policy. It is the intent of the parties to this Agreement that the General Liability coverage required herein shall be primary to and shall seek no contribution from all insurance available to District, with District's insurance being excess, secondary and non-contributing. The Commercial General Liability coverage provided by Consultant 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.

8.5 Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of District.

8.6 The District shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the District, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except

where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to District at the address provided in this Agreement for Notice, within ten (10) days of the requested change. Consultant shall pay any costs incurred as a result of said changes.

8.7 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by District, Consultant shall notify District of such and shall give such notices not less than thirty (30) days prior to the change, if Consultant knows of said change in advance, or ten (10) days' notice after the change, if the Consultant did not know of the change in advance. In the event of cancellation or non-renewal, such notice must be accompanied by a replacement Certificate of Insurance. All notices under this Article shall be given to District at the address provided in the Notice section of this Contract.

8.8 If Consultant fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, District may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; however, procuring of said insurance by District is an alternative to other remedies District may have, and is not the exclusive remedy for failure of Consultant to maintain said insurance or secure such endorsement. In addition to any other remedies District may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, District shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof. A stop work order given to Consultant by District in accordance with this Article shall not constitute a Suspension of Work under this Agreement.

8.9 It is agreed that Consultant's insurance shall be deemed primary with respect to any insurance or self-insurance carried by District for liability arising out of operations under this Agreement.

8.10 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

IX. INDEMNIFICATION

9.1 Consultant (for purposes of this Section referred to as Licensed Engineer) whose work product is the subject of this contract for engineering services and other related professional services, agrees to INDEMNIFY AND HOLD DISTRICT, ITS OFFICERS AND EMPLOYEES, HARMLESS against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reimbursement of reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may **ARISE OUT OF OR BE OCCASIONED OR CAUSED BY ANY NEGLIGENT ACT, ERROR, OR OMISSION OF LICENSED ENGINEER OR ANY AGENT, OFFICER, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF LICENSED ENGINEER** while in the exercise of performance of the rights or duties under this Agreement.

9.2 The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of District, its trustees, officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT LICENSED ENGINEER AND DISTRICT ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE DISTRICT UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IN THE EVENT DAMAGES ARE BASED ON APPORTIONED LIABILITY REASONABLE ATTORNEYS FEES AND COSTS OF DEFENSE SHALL BE APPORTIONED ON THE SAME BASIS.**

9.3 Licensed Engineer shall promptly advise the District, in writing, of any claim or demand against the District or Licensed Engineer known to Licensed Engineer related to or arising out of Licensed Engineer activities under this contract.

9.4 The provisions of this section 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.

X. ENGINEER'S LIABILITY AND STANDARD OF CARE

10.1 Services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of professional care and skill ordinarily provided by competent members of the same profession under similar circumstances and professional license as expeditiously as is prudent considering the ordinary professional skill and care of a competent member of the same profession. Acceptance of reports or other documents by District shall not constitute nor be deemed a release of the responsibility and liability of Consultant, its employees, associates, agents or subcontractors for the accuracy and competency of their testing, reports, assessments or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by District for any defect or error in testing, reports, or assessments and work performed by Consultant, its employees, subcontractors, and agents.

XI. CONSULTANT'S WARRANTY UNDER THE PROFESSIONAL SERVICES PROCUREMENT ACT

11.1 Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for Consultant to solicit or secure this Agreement, and that it has not, for the purpose of soliciting or securing this Agreement, paid, compensated, or agreed to pay or compensate, any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift, for any other consideration contingent upon or resulting from the award or making of this Agreement. For breach of the foregoing warranty, the District shall have the right to terminate the Agreement "for cause" under the provisions of this Agreement. However, breach of the warranty required in this provision constitutes fraud by operation of law; therefore, any Consultant found in breach of such warranty, by a final judgment of a Court of competent jurisdiction, shall take no compensation under this Agreement for any services rendered and such forfeiture shall not bar the District from pursuit and collection of any and all other damages, at law and in equity, to which it may be justly entitled. This Agreement is entered into under competency requirements of the Texas Professional Services Procurement Act governing District employment of engineering and other professionals.

XII. ASSIGNMENT OF RIGHTS OR DUTIES

12.1 By entering into this Agreement, District has approved the use of subcontractors, if any, identified in Consultant's Proposal. No further approval shall be needed for Consultant to use such subcontractors or sub-consultants as are identified in Consultant's Proposal.

12.2 Except as otherwise required herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the prior written consent of District. Engineering services required by law to be performed by a licensed engineer, or services which, by law, require the supervision and approval of a licensed engineer, may only be subcontracted upon the prior written approval of the District. Any other services to be performed under this Agreement may be subcontracted upon the written approval of District's representative. As a condition of consent, if same is given, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor consultant, assignee, transferee or subcontractor. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by District in accordance with this Article.

12.3 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this Agreement, without said written approval, shall be void, and shall confer no rights upon any third person. Should Consultant assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this Agreement, District may, at its option, terminate this Agreement as provided herein, and all rights, titles and interest of Consultant shall thereupon cease and terminate, notwithstanding any other remedy available to District under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to District, which District sustains as a result of such violation.

12.4 Consultant agrees to notify District's representative of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to District under

this Agreement, any such change of ownership interest or control of its business entity may be grounds for termination of this Agreement in accordance with Article VI, TERMINATION.

XIII. INDEPENDENT CONTRACTOR

13.1 Consultant covenants and agrees that (s)he is an independent contractor and not an officer, agent, servant, or employee of District; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of *respondeat superior* shall not apply as between District and Consultant, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between District and Consultant.

XIV. NOTICES

14.1 Unless otherwise expressly provided elsewhere in this Agreement, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier.

If intended for District, to:

Erin Warren, Superintendent of Schools
Luling Independent School District
212 E. Bowie Street
Luling, Texas 78648

If intended for Consultant, to:

XV. WORK ON SCHOOL DISTRICT PREMISES

15.1 To the extent that the Work may be performed in connection with an educational facility which is currently occupied and in use, it is imperative that Consultant's operations and the performance of the Work not interfere with, interrupt, disturb, or disrupt District's normal operations or facilities. Consultant agrees to and shall comply with all rules, regulations and requirements of the District 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 District. Consultant shall exercise the utmost skill and judgment to ensure that testing activities will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Consultant recognizes that the ongoing District activities in proximity with its activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises and may require additional background checks of its employees and subcontractors, if applicable, as required by Article 15 of this Contract. Such coordination and adequate site access shall be the responsibility of Consultant. Consultant understands and accepts the difficulties and the cost associated with working in an existing facility and the potential delays and disruptions in its Work, and has considered such constraints in the negotiation of this Agreement.

15.2 The Consultant shall be responsible for the actions of Consultant's agents, employees and all sub-consultants working under it. The Consultant agrees that if the Project Site is a public school campus, it shall prohibit the possession or use of alcohol, controlled substances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the Consultant's forces consistent with the nature of the work being performed. Sexual harassment of employees of the Consultant, or employees or students of the District by employees of the Consultant is strictly forbidden. Any employee of the Consultant who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Consultant, including removal from the job site.

15.3 Criminal History Records Checks.

15.3.1 **Definitions.** For purposes of this Article 15.3 (and all subsections) the following definitions shall be applicable:

A. "Continuing Duties" shall mean work duties that are performed pursuant to a contract on a regular, repeated basis rather than infrequently or one-time only.

B. "Covered Employees", shall mean, all employees of Consultant, as well as employees of Consultant's subcontractors, consultants or independent contractors (of every tier), who will have Continuing Duties related to the services contracted for herein and the Opportunity For Direct Contact With Students in connection with the subject employee's Continuing Duties.

C. "Disqualifying Criminal History" means: a conviction within the last 30 years, related to one or more of the following offenses, if at the time of the offense, the victim was under 18 years of age or enrolled in a public school: (1) a felony offense under Texas Penal Code Title 5 Offenses Against Persons (homicide; kidnapping, unlawful restraint, smuggling of persons, trafficking of persons, sexual offenses; and assault offenses); (2) an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or (3) an equivalent offense under federal law or the laws of another state. Consultant shall assume all expenses associated with obtaining criminal history record information, providing the certification, and performing Consultant's responsibilities as set out herein.

D. "Opportunity For Direct Contact With Students" is contact that results from activities that provide a substantial opportunity for verbal or physical interaction with students, and that is not supervised by a certified educator or other professional district employee. An employee is not considered to have an Opportunity For Direct Contact With Students if: (1) the employee's work does not involve the construction alteration or repair of an Instructional Facility; (2) the employee's work involves construction of a new Instructional Facility and the person's duties related to the contacted services will be completed not later than the seventh day before the first date the facility will be used for instructional purposes; or (3) if the employee's work involves an existing Instructional Facility and:

(a) the project site 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 Consultant has adopted a written policy applicable to its employees, as well as employees of its subcontractors (of any tier) and its independent contractors and consultants, which prohibits these parties from interacting with students or entering areas used by students, informs these parties of the policy, and enforces the policy on the Project site and at any other areas where the Work of this Contract will be conducted.

(c) the Consultant has sought and received written approval by the District of the adopted policy (including its enforcement provisions) and Consultant's its means of informing the relevant parties of the existence of the policy.

(d) Consultant certifies that, if it has taken the above precautions or imposed conditions to ensure that the Consultant's employees and employees of any of its subcontractors, independent contractors, or consultants, will not become Covered Employees, then Consultant will make reasonable efforts to ensure that these precautions or conditions continue throughout the time the contracted services are provided.

E. "Instructional Facility" is defined as real property or improvements to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required under Texas Education Code § 28.002; Texas Education Code § 22.08341(a)(2); and Texas Education Code § 46.01.

15.3.2 Pursuant to Texas Education Code §22.08341, Consultant shall obtain criminal history record information through the Fingerprint-Based Applicant Clearinghouse of Texas ("FACT Clearinghouse"), for all of Consultant's Covered Employees. To the extent, Consultant does not have a direct contractual connection with a lower-tier subcontractor, Consultant shall require its subcontractor, independent contractors, and consultants, by the terms of their respective contract with Consultant, to obtain the required criminal history record information through the FACT Clearinghouse, for their Covered Employees, and that such subcontractors, independent contractors, and consultants of Consultants subcontractors, require their subcontractors, independent contractors, and consultants of every tier, to timely make the same certifications to the Consultant as those required by the District from the Consultant

herein, in order to allow Consultant to timely provide the certifications to the District required by the following paragraph, pursuant to Texas Education Code §22.08341. If Consultant is required by this subsection to obtain criminal history record information through the FACT Clearinghouse, then Consultant will subscribe the FACT Clearinghouse for purposes of receiving updates to the criminal history record information it obtained and shall require the same of its lower-tier subcontractors, independent contractors and consultants, by contract.

15.3.3 If Covered Employees will be working on the Project, before beginning any Work on the Project, Consultant will provide written certification to the District that Consultant that the criminal history review requirements for all Covered Employees working on the District's Project have been satisfied, and specifically that Consultant:

A. has obtained the required criminal history record information through the FACT Clearinghouse for its Covered Employees;

B. has obtained written certification from its subcontractors independent contractors, and consultants (of any tier) that they have obtained the required criminal histories documentation through the FACT Clearinghouse for the subcontractor's, independent contractors', and consultants' Covered Employees; that the criminal history review requirements for all Covered Employees working on the District's Project have been satisfied; that either none of their respective Covered Employees had a Disqualifying Criminal History, or if a Covered Employee had a Disqualifying Criminal History they have been excluded from assignment to the Project; and that if the subcontractor, independent contractor, or consultant receives information during the performance of this Contract that one of its Covered Employees associated with the Work of this Contract, is subsequently reported to have a Disqualifying Criminal History or offense, it will immediately remove the Covered Employee from the project site or any other District Property where the Work of this Contract will be conducted and notify the Consultant in writing within three (3) business days;

C. will not assign or permit Covered Employees (of either Consultant or any of its subcontractors, independent contractors, or consultants) with a Disqualifying Criminal History to performing any work on District's project or on District's property where the Work of this Contract will be conducted;

D. if Consultant receives information during the performance of this Contract that a Covered Employee associated with the Work of this Contract, is subsequently reported to have a Disqualifying Criminal History or offense, it will immediately remove the Covered Employee from the project site or any other District Property where the Work of this Contract will be conducted and notify the District in writing within three (3) business days; and

E. if any employee associated with the work under this Contract is not a Covered Employee will make a reasonable effort to ensure that the reasons the employee is determined not to be a Covered Employee will continue to exist throughout the time the contracted services are provided.

XVI. TESTING AND OBSERVATIONS

16.1 District understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Consultant will select sampling sites and testing materials, provide test results, and provide its professional opinion in accordance with its standard of care based on tests and field observations for the work tested. District understands that testing and observation are not continuous or exhaustive, and District understands that even if conducted in accordance with its standard of care, testing may only reduce, not eliminate project risk. District agrees to the level or amount of testing performed and the associated risk. District is responsible (even if delegated to contractor) for notifying and scheduling Consultant so Consultant can perform Materials Testing Services.

XVII. SUB-SURFACE EXPLORATIONS

17.1 Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. District understands Consultant's layout of boring and test locations is approximate and that Consultant may deviate a reasonable distance in accordance with its standard of care, from those locations. Consultant will take reasonable precautions to reduce damage to the site when performing Services; however, District accepts that invasive services such as drilling or

sampling may damage or alter the site. Large scale restoration is not provided unless specifically included in the Services.

XVIII. UTILITIES

18.1 Consultant shall utilize a utility locating service for public utilities. District shall provide the location and/or arrange for the marking of private utilities and subterranean structures, if known to exist. Consultant shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Consultant shall not be responsible for damage to subterranean structures or utilities that are not called to Consultant's attention, are not correctly marked, including by a utility locate service, or are incorrectly shown on the plans furnished to Consultant, but shall use reasonable care to identify conditions which indicate the existence of unknown conditions and call such conditions to the attention of the District representative.

IXX. CONTRACT CONSTRUCTION

9.1 All parties have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

XX. FAMILIARITY WITH LAW AND CONTRACT TERMS

20.1 Consultant represents that, prior to signing this Agreement; Consultant has become thoroughly acquainted with all matters relating to the performance of this Agreement, site conditions, all applicable laws, and all of the terms and conditions of this Agreement.

XXI. APPLICABLE LAW AND VENUE

21.1 This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

21.2 The obligations of the parties to this Agreement shall be performable in the county where the Project is located, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in that county.

XXII. SEVERABILITY

22.1 In the event any one or more paragraphs or portions of this Agreement are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this Agreement, but such shall be confined to the specific section, sentences, clauses or portions of this Agreement held invalid or unenforceable.

XXIII. FORCE MAJEURE

23.1 In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

XXIV. SUCCESSORS

24.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this Agreement, their assigns.

XXV. NON-WAIVER OF PERFORMANCE

25.1 A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of

either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged.

25.2 No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXVI. NO THIRD-PARTY BENEFICIARIES AND IMMUNITY

26.1 For purposes of this Agreement, including its intended operation and effect, the Parties specifically agree and contract that: (1) this Agreement only affects matters/disputes between the Parties to this Agreement, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with District or Consultant or both, or that such third parties may benefit incidentally by this Agreement; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either District or Consultant. Nothing in this Agreement shall be deemed to relinquish, waive, modify or amend any immunity or legal defense available at law or in equity. No provision of this Agreement is consent to suit.

XXVII. LEGAL AUTHORITY

27.1 The signer of this Agreement for District and Consultant each represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of District and Consultant respectively, and to bind District and Consultant to all of the terms, conditions, provisions and obligations herein contained.

XXVIII. CERTIFICATIONS

28.1 Pursuant to Texas Government Code Chapter 2270, if this contract is valued at \$100,000 or more and if the Architect has at least ten (10) full time employees, then the Architect, by its execution of this Agreement represents and warrants to the District that the Architect does not boycott Israel and will not boycott Israel during the term of this Agreement. This section does not apply to a sole proprietorship

Note: On April 25, 2019, the U.S. District Court for the Western District of Texas entered a preliminary injunction enjoining the enforcement of the then-current version of Texas Government Code Chapter 2270 in any state contract. After the date of the injunction, Chapter 2270 was amended to narrow its applicability and the new statutory requirement is as stated above. As the amended statute may not cure the entire breadth of issues addressed by the injunction, the Owner does not intend to seek enforcement of this statute until further order of the Court which issued the injunction or higher court having jurisdiction over the issue.

28.2 Pursuant to Texas Government Code Chapter 2270, the Consultant represents and warrants that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Consultant has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.

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

XXIX. ENTIRE AGREEMENT

29.1 This Agreement, together with its Attachments embodies the complete Agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written consent of the parties.

29.2 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

EXECUTED ON THIS, THE ____ DAY OF _____, 2019.

LULING INDEPENDENT SCHOOL DISTRICT **[GEOTECH CONSULTANT]**

By: _____ By: _____
Erin Warren , Superintendent of Schools _____,
Federal Tax ID # _____

ATTACHMENT A
Geotechnical Engineering Proposal
and Not to Exceed Base Price Estimate

[TO BE ATTACHED AFTER NEGOTIATION – DO NOT ATTACH AT THIS STAGE]

ATTACHMENT A-1
Schedule of Hourly Fees for Professional Geotech Services
and Expense Reimbursement Rates

[TO BE ATTACHED AFTER NEGOTIATION – DO NOT ATTACH AT THIS STAGE]

ATTACHMENT B
Construction Materials Testing and Observation Proposal
and Not to Exceed Base Price Estimate

[TO BE ATTACHED AFTER NEGOTIATION – DO NOT ATTACH AT THIS STAGE]

ATTACHMENT B-1
Schedule of Hourly Fees for Construction
Materials Testing and Observation Services
and Expense Reimbursement Rates

[TO BE ATTACHED AFTER NEGOTIATION – DO NOT ATTACH AT THIS STAGE]

**RFQ EXHIBIT B-1
PROFESSIONAL SERVICES AGREEMENT
FOR CONSTRUCTION MATERIAL TESTING SERVICES FOR
ATHLETIC IMPROVEMENTS**

This Agreement is made and entered into by and between the **LULING INDEPENDENT SCHOOL DISTRICT** ("District"), an Independent School District and political subdivision of the State of Texas and **[GEOTECH ENGINEERING CONSULTANT]**, by and through its designated officer(s) pursuant to its by-laws or a resolution of its Board of Directors ("Consultant"), both of which may be referred to herein collectively as the "Parties", to provide Geotechnical Investigation, Analysis and Engineering Services and Construction Materials Testing as provided herein for the following Project:

Athletic Improvements

Demolition of football field goal posts, lighting system, and press box; construction of new support structure and press box; construction of new synthetic turf football field, drainage, and new perimeter curb. Installation of new goal posts, power outlets, new lighting, and new steel support structure with new press box

Demolition of Track and high jump pad and perimeter fencing; construction of new 7 lane Track, with perimeter curb and drain system, and

Demolition of Baseball Field lighting system. Installation of new sports lighting system for baseball field with wireless control system.

IN CONSIDERATION of the mutual covenants, terms, conditions, privileges and obligations herein contained, District and Consultant do hereby agree as follows:

I. PERIOD OF SERVICE

1.1 This Agreement shall take effect upon execution by both Parties and continue in full force and effect for the period required for completion of the duties as set forth in the Scope of Services. Performance for the Project. Services shall commence upon issuance of a Notice to Proceed by the District's Representative, and shall terminate upon substantial completion of Consultant's duties as set forth in the Scope of Services and written acceptance by the District of the work product and services rendered, unless extension or earlier termination shall occur pursuant to any of the provisions hereof.

1.2 If funding the Project is not appropriated during the time this Agreement is entered into, District retains the right to terminate this Agreement at the expiration of each of the District's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

II. SCOPE OF SERVICES

2.1 Consultant, in consideration for the compensation herein provided, shall render Geotechnical Investigation, Analysis and Engineering Services and Construction Materials Testing services in connection with the Project listed above. The Consultant's work will generally consist of the following broad categories of work which will be more particularly defined in the Engineer's Proposals for Geotechnical Investigation, Analysis and Engineering Services and Construction Materials Testing Services in connection with the Projects listed above. attached hereto as **Attachments A and B**, respectively:

2.1.1 Geotechnical Investigation, Analysis And Engineering.

2.1.1.1. **Investigation.** Performance of comprehensive geotechnical investigation and analysis of the relevant site identified in the Contract Documents for the Project in order to develop a detailed understanding of the site's geotechnical conditions, including its general soil, substrate and groundwater characteristics, specifically for the purposes of providing design recommendations for track and field sub-base, light pole and goal post foundations.

2.1.1.2 **Collection and Logging of Samples.** Conduct subsurface exploration and collection of representative samples (test borings) of existing soils, aggregate base materials and concrete for laboratory analysis. The numbers, depths and locations will be determined as deemed appropriate in the Engineer's professional judgement. Create a log of exploratory

borings summarizing the soil conditions encountered and the results of the laboratory testing as well as a plan indicating the number and location of the borings and elevations related to a common benchmark or datum, and depth. **All field work be conducted and logged by an experienced geotechnical engineer or Sr. field technician.**

2.1.1.3 Laboratory and Field Testing. Conduct laboratory and field testing of the collected samples to measure pertinent soil parameters or engineering properties, including hazmat in soil in accordance with American Society for Testing and Materials (ASTM) procedures, which may include but will not be limited to the following: Moisture-Density Relationship testing, Atterberg Limits Determination, Sieve Analysis; In Place Density Testing and Laboratory Testing; Concrete Compressive Strength Testing, Asphalt cores of in-place asphalt; Asphaltic Concrete Extraction, Gradation, Bitumen Content, Stability, Laboratory Density, and Specific Gravity. **All field work be conducted and logged by an experienced geotechnical engineer or Sr. field technician.**

2.1.1.4 Analysis of Information. Analyze the information developed by investigation or otherwise available to the Engineer, including those aspects of the subsurface conditions which may affect design and construction of proposed

2.1.1.5 Written Report. Prepare and submit written report to the District, providing all boring logs, lab test data, a description of the investigation, a description of the existing surface and subsurface conditions. The report should include all laboratory determinations of soil properties and probable effect of soil conditions on construction of applicable structure to be built on the specified site, setting out Engineer's professional evaluation and recommendations, highlighting necessary areas of consideration in design preparation and construction, including some or all of the following:

- A. Suitable base systems and drainage infrastructure required for proper installation and maintenance of track and field overlay, including excavation requirements, backfill soil preparation and compaction requirements and nature of engineered fill, as recommended based on findings and professional analysis.
- D. Suitability of site excavated material for use as fill or backfill material and general availability of suitable off-site fill, if required.
- F. Procedures for subgrade preparation and criteria for testing subgrade preparations for compliance with the specified procedures and prohibitions, if any, regarding vehicle use over subbase, based on findings and professional analysis.
- G. Management of groundwater and surface water drainage and proper drying times and drainage during and following installation, based on findings and professional analysis.
- H. Suitable embedment design and materials for light pole and goal post foundations based on findings and professional analysis and/or recommended materials required to achieve alternate foundation.
- I. Excavation and removal of materials recommended for materials other than normal soils, such as rock, caliche etc. in locations for light poles to be placed.
- H. Other evaluations and recommendations deemed necessary and advisable in the professional opinion of the Engineer and approved by the District in writing.

2.1.2 Independent Construction Materials Testing. Performance of observation, testing, analysis and report conclusions related to the materials provided and workmanship performed by the various construction contractors, to ensure compliance with specific Project requirements and the Construction Documents and Specifications for the Project. Performance of observations and field-testing, on an "on-call" basis, in order to provide required quality assurance services. Engineering technicians shall perform observations for the required disciplines and field-testing for associated site improvements. Observations and field-testing will be performed in accordance with instructions of the District's Project representative and in compliance with the Texas Engineering Practices Act. Daily reports will be written for each day "on-call" services are provided. During the course of construction, Written reports of findings will be submitted periodically as specified by the District's Project representative. The Services shall be performed in conformance with the standards of care and quality

practiced by engineering professionals experienced materials testing and quality assurance generally on projects similar to the Project. During the course of construction, Consultant will provide written reports on the Project, to the District's representative of all test results, particularly those failing to meet project specifications. Written reports of findings will be submitted periodically as specified by the District's representative. Some specific areas to be addressed are as follows:

2.1.2.1. **Track And Field Installation.** testing and observation to assure proper excavation of fill, preparation of fill materials, and backfill procedures, whether site excavated material, offsite material, or engineered fill is used; observation and testing to assure proper subgrade preparation and installation in accordance with the specified procedures and adherence to drying times and other prohibitions, including use of vehicles on top of subgrade; observe drainage system installation and assure materials are as specified and properly placed before covering, observe installation of track and field overlay.

2.1.2.2. **Light Poles** to include some or all of the following: observation and testing of reinforced concrete foundations and installation of light poles to assure compliance with specifications of structural engineer; if light pole or other foundations are poured, observation of pour, testing of reinforcing steel, if any, and observation to assure it is installed in accordance with the Contract Documents and that proper cure times are allowed; if direct burial of steel light poles is specified, the impervious coating on poles should be inspected to determine if damaged in transit and, if so, repair required in accordance with manufacturers procedures, including assuring appropriate cure times

2.1.2.3. **Other Support Structures.** Foundation support of any structures and slabs, including soil bearing pressures, bearing elevations and anticipated settlement; Pier Construction, Concrete Mix Design & Testing (cast-in-place & pre-cast), (including light pole foundations and other) Fill, Backfill, Sub grade & Base, Asphalt Mix Design & Testing, Earthwork/Soil Testing, and other special inspections as may be requested by the District's Project representative.

2.2 A regular duty of the geotechnical engineer is to meet with District for evaluations of Project progress. Budget and time constraints will be important factors in any discussion and geotechnical engineers will be expected to know and provide a variety of important information. Whether acting in its role as Geotechnical Engineer or Materials Testing Consultant, shall be represented by a professional engineer licensed to practice in the State of Texas or an Engineer-In-Training subject to the supervision of a professional engineer, at meetings of any official nature concerning the Project, including but not limited to Scope Meetings, Review Meetings and other meetings as may be required for the Project. All submittals shall carry the signature and seal; or, in the case of progress submittals or incomplete submittals, an appropriate disclaimer with the responsible professional engineer's name and license number and, adjacent thereto, the date of the submittal. All Services performed under this Agreement must be conducted in full conformance with the Texas Engineering Practice Act. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or subcontractors of Consultant.

2.3 Consultant shall complete all work on the Project in compliance with this Agreement, in a timely fashion consistent with the construction schedule and agrees to staff the Project with sufficient necessary, qualified personnel to the Project, in order not to delay or disrupt the progress of the Project.

III. COORDINATION WITH THE DISTRICT

3.1 Consultant shall hold periodic conferences with District's representative, so that the Project, as developed, will have the full benefit of District's experience and knowledge of existing needs and facilities and be consistent with the District's current policies and standards. The District shall make available, for Consultant's use, all existing plans, maps, field notes, statistics, computations, and other data in its possession relative to existing facilities and to this Project, if any, as may be requested by Consultant at no cost to Consultant, but does not warrant the accuracy of such documents.

3.2 The District's representative shall act on behalf of District with respect to the work performed under this Agreement, and shall have complete authority to transmit instructions, receive information, and interpret and define District's policies and decisions with respect to materials, equipment elements and systems pertinent to Consultant's services.

3.3 The District shall provide written notice to the Consultant of any errors or omissions discovered in

the Consultant's services, or performance, or of any development that affects the scope or timing of Consultant's services.

3.4 Consultant shall complete all applications and furnish all required data compiled by Consultant for District's use in obtaining any permits or approvals from governmental authorities having jurisdiction over the Projects, as may be necessary for completion of the Project. Consultant shall not be obligated to develop additional data, prepare extensive reports or appear at hearings in order to obtain said permits or approvals, unless compensated therefore as provided in Article IV, COMPENSATION.

IV. COMPENSATION

4.1 For and in consideration of the services to be rendered by Consultant, District shall pay Consultant a fee not to exceed that set forth in this Article IV, COMPENSATION. Nothing contained in this Agreement shall require District to pay for any unsatisfactory work, as determined by District's representative, or for work that is not in compliance with the terms of this Agreement. The District shall not be required to make any payments to Consultant at any time Consultant is in default under this Agreement.

4.2 Basis For Compensation and Invoicing.

4.2.1 The not to exceed fee for Consultant's base work as defined in the Scope of Services for Geotechnical Testing and Analysis ("Geotech") shall not exceed the sum of _____ (\$_____) ("Geotech Fee"). The Consultant's hourly rates for Geotech services are set out in the Schedule of Fees for Professional Geotech Services and associated expense reimbursement rates are set out in **Attachment A-1** and are incorporated herein by reference.

4.2.2 The total fee for Consultant's base work as defined in the Scope of Services for Independent Materials Testing ("MTS") shall not exceed the sum of _____ (\$_____) ("MTS Base Fee"). The Consultant's hourly rates for MTS services are set out in the Schedule of Fees for Professional MTS Services and associated expense reimbursement rates are set out in **Attachment B-1**, and are incorporated herein by reference.

4.2.3 Consultant will submit invoices monthly for MTS and Geotechnical work performed and completed and reimbursable expenses properly incurred and documented, which have not been included on previous invoices based upon the Schedule of Fees for Professional Services attached hereto as "**Attachment A-1 and B-1**" respectively. Payment of invoices shall be due and payable upon not later than thirty (30) days after the District Superintendent's receipt of Consultant's invoice for services, which has been reviewed and approved by the Project Representative. Payment shall be remitted to _____. Interest shall accrue on overdue balances in accordance with the provisions of the Texas Prompt Payment Act. The scope and quantity of the services provided will be dependent upon services actually authorized and required by the District and performed by the Consultant. Charges will be assessed only for actual services rendered up to the not to exceed fees stated herein.

4.3 Modifications. Consultant and District acknowledge that the MTS and Geotech Fees, as set out above, has been established based upon the total estimated costs of services to be rendered under the Agreement. Compensation for additional services shall be subject to renegotiation in accordance with Section 4.4 below, and approved by the Board of Trustees.

4.4 Additional Professional Services. Consultant may be required to perform the additional services in connection with this Agreement including, but not limited to, the following:

4.4.1 Acting as an expert witness in any litigation with third parties, arising in connection with the Project, including the preparation of engineering data and reports and providing testimony as necessary.

4.4.2 Services after the completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantee called for in any contract for the Project.

4.4.3 Additional copies of reports, drawings and specifications over the number specified in this Agreement.

4.5 Compensation for Additional Professional Services. Compensation for such additional services shall be subject to prior approval of the District and approval of the Board of Trustees if additional funds

not provided for in the initial budget are required to cover such services. Should Consultant be directed in writing by District's representative to perform these services, compensation shall be paid by District to Consultant as authorized in writing by District's representative, based on one or more of the following:

- (1) Based upon the hourly rates set out in **Attachment A-1 and B-1**.
- (2) Lump sum per item of work – to be negotiated.
- (3) Lump sum – to be negotiated.

V. OWNERSHIP AND RETENTION OF DOCUMENTS AND ACCESS TO LAB RESULTS

5.1 Upon completion or termination of the Project, or upon request by the District, all documents and information, in whatever form, given to, prepared or assembled by the Consultant in connection with its performance of its duties under this Agreement shall become the sole property of the District and shall be delivered at no cost to the District without restriction on future use. Documents and information covered by this paragraph shall include, but not be limited to, reports, test results, field notes and other data. The District shall have free and immediate access to all such information at all times during the term of this Agreement with the right to make and retain copies documents, notes and data, whether or not the Project has been completed. Prior to surrender of the documents and information, Consultant may make copies of any and all documents for its files, at its sole cost and expense. Consultant shall not be liable for any unauthorized reuse or modification of its documents, reports or other work products.

5.2 At any time during the Project, upon reasonable notice and during normal business hours, the District shall have the right to unrestrained direct access to laboratories and testing facilities used by Consultant for work performed by Consultant under this Agreement; and the District shall have the unrestricted right to obtain original or duplicate copies of reports and testing results directly from the lab or testing facility used by Consultant.

5.3 The Consultant agrees to maintain all books, records, testing samples, and reports required under this contract for the minimum period required by state law for record retention, but in no event less than ten (10) years after final payment is made and all pending matters are closed. Prior to the destruction or disposal of any records, testing samples, or reports, the Consultant will notify the District within 30 days of the scheduled destruction or disposal of said records, samples, or reports and give the District an opportunity to obtain possession of, retain and store same at its own cost. In addition, the Consultant shall maintain an acceptable cost accounting system during the term of this Agreement. The Consultant agrees to provide the District, or any of their duly authorized representatives, access to any books, documents, papers and records of the Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions.

5.4 Consultant shall notify District, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that District will process and handle all such requests.

VI. TERMINATION OF AGREEMENT

6.1 Termination Without Cause.

6.1.1 This Agreement may be terminated by District without cause, prior to District's representative giving Consultant written Notice to Proceed, should District's representative, in its sole discretion, determine that it is not in District's best interest to proceed with this Agreement. Such notice shall be provided in accordance with the notice provisions contained in this Agreement, and shall be effective immediately upon delivery to the Consultant.

6.1.2 This Agreement may be terminated by the District at any time after issuance of the District's representative's Notice to Proceed, either for the District's convenience or because of Consultant's failure to fulfill the contract obligations. Upon receipt of such notice, services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the District.

6.1.3 If the termination is for the convenience of the District, and following inspection and acceptance of Consultant's services properly performed prior to the effective date of termination, an equitable adjustment in the contract price shall be made for work properly performed prior to notice of termination and receipted by the District. Consultant shall not, however, be entitled to lost or anticipated

profit on unperformed services, should District choose to exercise its option to terminate, nor shall Consultant be entitled to compensation for any unnecessary or unapproved work performed during time between the issuance of the District's notice of termination and the actual termination date.

6.1.4 If the termination is due to Consultant's failure to fulfill its obligations, the District may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Consultant shall be liable to the District for any additional cost occasioned to the District thereby.

6.1.5 If, after notice of termination for failure to fulfill contract obligations, it is determined that the Consultant had not so failed, the termination shall be deemed to have been effected for the convenience of the District. In such event, an equitable adjustment in the contract price shall be made as provided in paragraph 6.1.3 of this clause.

6.1.6 The rights and remedies of the District provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

6.1.7 This Agreement may be terminated by the Consultant, at any time after issuance of the District's representative's Notice to Proceed, upon ninety (90) calendar days written notice provided in accordance with the Notice provisions contained in this Agreement.

6.2 Defaults With Opportunity for Cure. Should Consultant fail, as determined by the District's representative, to satisfactorily perform the duties set out in Article II. SCOPE OF SERVICES; or comply with any covenant herein required, such failure shall be considered an Event of Default. In such event, the District shall deliver written notice of said default, in accordance with the notice provisions contained in this Agreement, specifying the specific Events of Default and the action necessary to cure such defaults. Consultant shall have ten (10) calendar days after receipt of the written notice to cure such default. If Consultant fails to cure the default within such cure period, or take steps reasonably calculated to cure such default, District shall have the right, without further notice, to terminate this Contract in whole or in part as District deems appropriate, and to contract with another Consultant to complete the work required by this Agreement. District shall also have the right to offset the cost of said new agreement with a new Consultant against Consultant's future or unpaid invoice(s), subject to any statutory or legal duty, if any, on the part of District to mitigate its losses.

6.3 Termination For Cause. Upon the occurrence of one (1) or more of the following events, and following written notice to Consultant given in accordance with the notice provisions contained in this Agreement, District may immediately terminate this Contract, in whole or in part, "for cause":

6.3.1 Consultant makes, directly or indirectly through its employees or representatives, any material misrepresentation or provides any materially misleading information to District in connection with this Agreement or its performance hereunder; or

6.3.2 Consultant violates or materially fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this Agreement, except those events of default for which an opportunity to cure is provided herein; or

6.3.3 Consultant fails to cure, or initiate steps reasonably calculated to cure, a default as required by this Agreement, within the time period required for cure; or

6.3.4 Consultant violates any rule, regulation or law to which Consultant is bound or shall be bound under the terms of this Agreement; or

6.3.5 Consultant attempts the sale, transfer, pledge, conveyance or assignment of this Agreement contrary to the terms of this Agreement.

6.3.6 Consultant ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Contract shall continue) and such petition is not dismissed within forty-five (45) days of filing; or if a receiver, trustee or liquidator is appointed for it, or its joint venture entity, or any substantial part of Consultant's assets or properties.

6.4 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

6.5 Orderly Transfer Following Termination. Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to District or to such person(s) or firm(s) as the District may designate, at no additional cost to District. Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant, or any of its subcontractors, pursuant to this Agreement. All completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced, or provided to Consultant, in connection with the services rendered by Consultant under this Agreement, regardless of storage medium, shall be transferred to District. Such record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents.

6.6 Claims for Outstanding Fees. Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to District its claims, in detail, for the monies owed by District for services performed under this Agreement through the effective date of termination. **Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of District and constitute a waiver by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.**

6.7 Termination Not Sole Remedy. In no event shall District's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of District's remedies, nor shall such termination limit, in any way, at law or at equity, District's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

VII. SUSPENSION OF WORK UNDER AGREEMENT

7.1 Right of District to Suspend. District may suspend this Agreement for any reason, with or without cause, upon the issuance of written Notice of Suspension in accordance with the Notice provisions contained in this Agreement. Such suspension shall take effect upon the date specified in such notice; provided, however, such date shall not be earlier than the tenth (10th) day following receipt by Consultant of said notice. The Notice of Suspension will set out the reason(s) for the suspension and the anticipated duration of the suspension, but will in no way guarantee the total number of days of suspension.

7.2 Consultant's Right to Terminate In Event of Suspension of Agreement. In the event such suspension exceeds one hundred and twenty (120) calendar days, Consultant shall have the right to terminate this Agreement. Consultant may exercise this right to terminate by issuing a written Notice of Termination to the District, delivered in accordance with the Notice provisions contained in this Agreement after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by District and such termination shall be subject to all the requirements set out in Paragraphs 6.5 and 6.6 above, related to the Orderly Transfer and Fee Payment.

7.3 Procedures Upon Receipt of Notice of Suspension.

7.3.1 Upon receipt of a notice of suspension and prior to the effective date of the suspension, Consultant shall, unless otherwise directed, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement.

7.3.2 Consultant shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

7.3.3 Copies of all completed or partially completed studies, plans and other documents prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to the District but shall be retained by Consultant until such time as Consultant may exercise the right to terminate.

7.3.4 During the period of Suspension, Consultant shall have the option to at any time submit the above referenced statement to the District for payment of any unpaid portion of the prescribed fee for services which have actually been performed to the benefit of the District under this Agreement, adjusted for any previous payments of the fee in question.

7.3.5 In the event Consultant exercises its right to terminate this Agreement at any time after the effective Suspension date, Consultant shall submit, within forty-five (45) calendar days after receipt by District of Consultant's notice of termination (if he has not previously done so) the above referenced statement showing in detail the services performed under this Agreement prior to the effective date of suspension. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of District and constitute a waiver by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.3.6 Upon the above conditions being met, the District's review of the submissions and finding the claimed compensation to be appropriate to the terms of this Agreement, the District shall pay Consultant that portion of the agreed prescribed fee for those as yet uncompensated services actually performed under this Agreement to the benefit of the District, adjusted for any previous payments of the fee in question.

VIII. INSURANCE REQUIREMENTS

8.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish an original completed Certificate of Insurance to District's representative, which shall be clearly labeled with the Project name and which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. District shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to District's representative, and no officer or employee shall have authority to waive this requirement.

8.2 The District reserves the right to review the insurance requirements of this Article during the effective period of this Contract and to modify insurance coverage and limits when deemed necessary and prudent by the District based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance will the District allow modification whereupon the District may incur increased risk.

8.3 Consultant's financial integrity is of interest to District, therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by District, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, except for professional liability, by companies authorized, approved or admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to District, in the following types and amounts:

<u>Worker's Compensation:</u> (Including Waiver of Subrogation Endorsement)	All liability arising out of Consultant's employment of workers and anyone for whom Consultant shall be liable for Worker's Compensation claims. Worker's Compensation is required and no "alternative" form of insurance shall be permitted.
<u>Employer's Liability:</u>	\$1,000,000.00
<u>Commercial General Liability:</u>	
Occurrence	\$1,000,000.00
Aggregate	\$2,000,000.00
Personal Injury	\$1,000,000.00 each person
<u>Automobile Liability:</u>	\$1,000,000.00 combined single limit
<u>Professional Liability:</u>	\$1,000,000 per claim 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, malpractice, error or omission in professional services. If written on a claims made basis, Consultant shall provide coverage for an additional 25 months after the completion date of the contract.

8.4 The General Liability and Automobile issued in the name of Consultant shall also name the District as an additional insured. The coverage afforded to the additional insured under the policy or policies shall be primary insurance and provide any defense provided by the policy. It is the intent of the parties to this Agreement that the General Liability coverage required herein shall be primary to and shall

seek no contribution from all insurance available to District, with District's insurance being excess, secondary and non-contributing. The Commercial General Liability coverage provided by Consultant 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.

8.5 Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of District.

8.6 The District shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the District, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to District at the address provided in this Agreement for Notice, within ten (10) days of the requested change. Consultant shall pay any costs incurred as a result of said changes.

8.7 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by District, Consultant shall notify District of such and shall give such notices not less than thirty (30) days prior to the change, if Consultant knows of said change in advance, or ten (10) days' notice after the change, if the Consultant did not know of the change in advance. In the event of cancellation or non-renewal, such notice must be accompanied by a replacement Certificate of Insurance. All notices under this Article shall be given to District at the address provided in the Notice section of this Contract.

8.8 If Consultant fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, District may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; however, procuring of said insurance by District is an alternative to other remedies District may have, and is not the exclusive remedy for failure of Consultant to maintain said insurance or secure such endorsement. In addition to any other remedies District may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, District shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof. A stop work order given to Consultant by District in accordance with this Article shall not constitute a Suspension of Work under this Agreement.

8.9 It is agreed that Consultant's insurance shall be deemed primary with respect to any insurance or self-insurance carried by District for liability arising out of operations under this Agreement.

8.10 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

IX. INDEMNIFICATION

9.1 Consultant (for purposes of this Section referred to as Licensed Engineer) whose work product is the subject of this contract for engineering services and other related professional services, agrees to INDEMNIFY AND HOLD DISTRICT, ITS OFFICERS AND EMPLOYEES, HARMLESS against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reimbursement of reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may **ARISE OUT OF OR BE OCCASIONED OR CAUSED BY ANY NEGLIGENT ACT, ERROR, OR OMISSION OF LICENSED ENGINEER OR ANY AGENT, OFFICER, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF LICENSED ENGINEER** while in the exercise of performance of the rights or duties under this Agreement.

9.2 The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of District, its trustees, officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT LICENSED ENGINEER AND DISTRICT ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF**

TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE DISTRICT UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IN THE EVENT DAMAGES ARE BASED ON APPORTIONED LIABILITY REASONABLE ATTORNEYS FEES AND COSTS OF DEFENSE SHALL BE APPORTIONED ON THE SAME BASIS.

9.3 Licensed Engineer shall promptly advise the District, in writing, of any claim or demand against the District or Licensed Engineer known to Licensed Engineer related to or arising out of Licensed Engineer activities under this contract.

9.4 The provisions of this section 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.

X. ENGINEER'S LIABILITY AND STANDARD OF CARE

10.1 Services and testing provided by Consultant under this Agreement will be performed in a manner consistent with that degree of professional care and skill ordinarily provided by competent members of the same profession under similar circumstances and professional license as expeditiously as is prudent considering the ordinary professional skill and care of a competent member of the same profession. Acceptance of reports or other documents by District shall not constitute nor be deemed a release of the responsibility and liability of Consultant, its employees, associates, agents or subcontractors for the accuracy and competency of their testing, reports, assessments or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by District for any defect or error in testing, reports, or assessments and work performed by Consultant, its employees, subcontractors, and agents.

XI. CONSULTANT'S WARRANTY UNDER THE PROFESSIONAL SERVICES PROCUREMENT ACT

11.1 Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for Consultant to solicit or secure this Agreement, and that it has not, for the purpose of soliciting or securing this Agreement, paid, compensated, or agreed to pay or compensate, any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift, for any other consideration contingent upon or resulting from the award or making of this Agreement. For breach of the foregoing warranty, the District shall have the right to terminate the Agreement "for cause" under the provisions of this Agreement. However, breach of the warranty required in this provision constitutes fraud by operation of law; therefore, any Consultant found in breach of such warranty, by a final judgment of a Court of competent jurisdiction, shall take no compensation under this Agreement for any services rendered and such forfeiture shall not bar the District from pursuit and collection of any and all other damages, at law and in equity, to which it may be justly entitled. This Agreement is entered into under competency requirements of the Texas Professional Services Procurement Act governing District employment of engineering and other professionals.

XII. ASSIGNMENT OF RIGHTS OR DUTIES

12.1 By entering into this Agreement, District has approved the use of subcontractors, if any, identified in Consultant's Proposal. No further approval shall be needed for Consultant to use such subcontractors or sub-consultants as are identified in Consultant's Proposal.

12.2 Except as otherwise required herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the prior written consent of District. Engineering services required by law to be performed by a licensed engineer, or services which, by law, require the supervision and approval of a licensed engineer, may only be subcontracted upon the prior written approval of the District. Any other services to be performed under this Agreement may be subcontracted upon the written approval of District's representative. As a condition of consent, if same is given, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor consultant, assignee, transferee or subcontractor. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by District in accordance with this Article.

12.3 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this Agreement, without said written approval, shall be void, and shall confer no rights upon any third person. Should Consultant assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this Agreement, District may, at its option, terminate this Agreement as provided herein, and all rights, titles and interest of Consultant shall thereupon cease and terminate, notwithstanding any other remedy available to District under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to District, which District sustains as a result of such violation.

12.4 Consultant agrees to notify District's representative of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to District under this Agreement, any such change of ownership interest or control of its business entity may be grounds for termination of this Agreement in accordance with Article VI, TERMINATION.

XIII. INDEPENDENT CONTRACTOR

13.1 Consultant covenants and agrees that (s)he is an independent contractor and not an officer, agent, servant, or employee of District; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of *respondeat superior* shall not apply as between District and Consultant, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between District and Consultant.

XIV. NOTICES

14.1 Unless otherwise expressly provided elsewhere in this Agreement, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier.

If intended for District, to:

Erin Warren, Superintendent of Schools
Luling Independent School District
212 E. Bowie Street
Luling, Texas 78648

If intended for Consultant, to:

XV. WORK ON SCHOOL DISTRICT PREMISES

15.1 To the extent that the Work may be performed in connection with an educational facility which is currently occupied and in use, it is imperative that Consultant's operations and the performance of the Work not interfere with, interrupt, disturb, or disrupt District's normal operations or facilities. Consultant agrees to and shall comply with all rules, regulations and requirements of the District 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 District. Consultant shall exercise the utmost skill and judgment to ensure that testing activities will not interfere with the use, occupancy and quiet enjoyment of facilities in use on the site. Consultant recognizes that the ongoing District activities in proximity with its activities shall result in the need for prompt and effective coordination of its services with those involved in the ongoing utilization of the premises and may require additional background checks of its employees and subcontractors, if applicable, as required by Article 15 of this Contract. Such coordination and adequate site access shall be the responsibility of Consultant. Consultant understands and accepts the difficulties and the cost associated with working in an existing facility and the potential delays and disruptions in its Work, and has considered such constraints in the negotiation of this Agreement.

15.2 The Consultant shall be responsible for the actions of Consultant's agents, employees and all sub-consultants working under it. The Consultant agrees that if the Project Site is a public school campus, it shall prohibit the possession or use of alcohol, controlled substances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the Consultant's forces consistent with the nature of the work being performed. Sexual harassment of employees of the Consultant, or employees or students of the District by employees of the Consultant is strictly forbidden. Any employee of the Consultant who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Consultant, including removal from the job site.

15.3 Criminal History Records Checks

15.3.1 **Definitions.** For purposes of this Article 15.3 (and all subsections) the following definitions shall be applicable:

A. "Continuing Duties" shall mean work duties that are performed pursuant to a contract on a regular, repeated basis rather than infrequently or one-time only.

B. "Covered Employees", shall mean, all employees of Consultant, as well as employees of Consultant's subcontractors, consultants or independent contractors (of every tier), who will have Continuing Duties related to the services contracted for herein and the Opportunity For Direct Contact With Students in connection with the subject employee's Continuing Duties.

C. "Disqualifying Criminal History" means: a conviction within the last 30 years, related to one or more of the following offenses, if at the time of the offense, the victim was under 18 years of age or enrolled in a public school: (1) a felony offense under Texas Penal Code Title 5 Offenses Against Persons (homicide; kidnapping, unlawful restraint, smuggling of persons, trafficking of persons, sexual offenses; and assault offenses); (2) an offense for which a defendant is required to register as a sex offender under Texas Code of Criminal Procedure Chapter 62; or (3) an equivalent offense under federal law or the laws of another state. Consultant shall assume all expenses associated with obtaining criminal history record information, providing the certification, and performing Consultant's responsibilities as set out herein.

D. "Opportunity For Direct Contact With Students" is contact that results from activities that provide a substantial opportunity for verbal or physical interaction with students, and that is not supervised by a certified educator or other professional district employee. An employee is not considered to have an Opportunity For Direct Contact With Students if: (1) the employee's work does not involve the construction alteration or repair of an Instructional Facility; (2) the employee's work involves construction of a new Instructional Facility and the person's duties related to the contacted services will be completed not later than the seventh day before the first date the facility will be used for instructional purposes; or (3) if the employee's work involves an existing Instructional Facility and:

(a) the project site 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 Consultant has adopted a written policy applicable to its employees, as well as employees of its subcontractors (of any tier) and its independent contractors and consultants, which prohibits these parties from interacting with students or entering areas used by students, informs these parties of the policy, and enforces the policy on the Project site and at any other areas where the Work of this Contract will be conducted.

(c) the Consultant has sought and received written approval by the District of the adopted policy (including its enforcement provisions) and Consultant's its means of informing the relevant parties of the existence of the policy.

(d) Consultant certifies that, if it has taken the above precautions or imposed conditions to ensure that the Consultant's employees and employees of any of its subcontractors, independent contractors, or consultants, will not become Covered Employees, then Consultant will make reasonable efforts to ensure that these precautions or conditions continue throughout the time the contracted services are provided.

E. "Instructional Facility" is defined as real property or improvements to real property, or a necessary fixture of an improvement to real property that is used predominantly for

teaching the curriculum required under Texas Education Code § 28.002; Texas Education Code § 22.08341(a)(2); and Texas Education Code § 46.01.

15.3.2 Pursuant to Texas Education Code §22.08341, Consultant shall obtain criminal history record information through the Fingerprint-Based Applicant Clearinghouse of Texas (“FACT Clearinghouse”), for all of Consultant’s Covered Employees. To the extent, Consultant does not have a direct contractual connection with a lower-tier subcontractor, Consultant shall require its subcontractor, independent contractors, and consultants, by the terms of their respective contract with Consultant, to obtain the required criminal history record information through the FACT Clearinghouse, for their Covered Employees, and that such subcontractors, independent contractors, and consultants of Consultants subcontractors, require their subcontractors, independent contractors, and consultants of every tier, to timely make the same certifications to the Consultant as those required by the District from the Consultant herein, in order to allow Consultant to timely provide the certifications to the District required by the following paragraph, pursuant to Texas Education Code §22.08341. If Consultant is required by this subsection to obtain criminal history record information through the FACT Clearinghouse, then Consultant will subscribe the FACT Clearinghouse for purposes of receiving updates to the criminal history record information it obtained and shall require the same of its lower-tier subcontractors, independent contractors and consultants, by contract.

15.3.3 If Covered Employees will be working on the Project, before beginning any Work on the Project, Consultant will provide written certification to the District that Consultant that the criminal history review requirements for all Covered Employees working on the District’s Project have been satisfied, and specifically that Consultant:

A. has obtained the required criminal history record information through the FACT Clearinghouse for its Covered Employees;

B. has obtained written certification from its subcontractors independent contractors, and consultants (of any tier) that they have obtained the required criminal histories documentation through the FACT Clearinghouse for the subcontractor’s, independent contractors’, and consultants’ Covered Employees; that the criminal history review requirements for all Covered Employees working on the District’s Project have been satisfied; that either none of their respective Covered Employees had a Disqualifying Criminal History, or if a Covered Employee had a Disqualifying Criminal History they have been excluded from assignment to the Project; and that if the subcontractor, independent contractor, or consultant receives information during the performance of this Contract that one of its Covered Employees associated with the Work of this Contract, is subsequently reported to have a Disqualifying Criminal History or offense, it will immediately remove the Covered Employee from the project site or any other District Property where the Work of this Contract will be conducted and notify the Consultant in writing within three (3) business days;

C. will not assign or permit Covered Employees (of either Consultant or any of its subcontractors, independent contractors, or consultants) with a Disqualifying Criminal History to performing any work on District’s project or on District’s property where the Work of this Contract will be conducted;

D. if Consultant receives information during the performance of this Contract that a Covered Employee associated with the Work of this Contract, is subsequently reported to have a Disqualifying Criminal History or offense, it will immediately remove the Covered Employee from the project site or any other District Property where the Work of this Contract will be conducted and notify the District in writing within three (3) business days; and

E. if any employee associated with the work under this Contract is not a Covered Employee will make a reasonable effort to ensure that the reasons the employee is determined not to be a Covered Employee will continue to exist throughout the time the contracted services are provided.

XVI. TESTING AND OBSERVATIONS

16.1 District understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. Consultant will select sampling sites and testing materials, provide test results, and provide its professional opinion in accordance with its standard of care based on tests and field observations for the work tested. District understands that testing and observation are not continuous or exhaustive, and District understands that even if conducted in accordance with its standard of care, testing may only

reduce, not eliminate project risk. District agrees to the level or amount of testing performed and the associated risk. District is responsible (even if delegated to contractor) for notifying and scheduling Consultant so Consultant can perform Materials Testing Services.

XVII. SUB-SURFACE EXPLORATIONS

17.1 Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. District understands Consultant's layout of boring and test locations is approximate and that Consultant may deviate a reasonable distance in accordance with its standard of care, from those locations. Consultant will take reasonable precautions to reduce damage to the site when performing Services; however, District accepts that invasive services such as drilling or sampling may damage or alter the site. Large scale restoration is not provided unless specifically included in the Services.

XVIII. UTILITIES

18.1 Consultant shall utilize a utility locating service for public utilities. District shall provide the location and/or arrange for the marking of private utilities and subterranean structures, if known to exist. Consultant shall take reasonable precautions to avoid damage or injury to subterranean structures or utilities. Consultant shall not be responsible for damage to subterranean structures or utilities that are not called to Consultant's attention, are not correctly marked, including by a utility locate service, or are incorrectly shown on the plans furnished to Consultant, but shall use reasonable care to identify conditions which indicate the existence of unknown conditions and call such conditions to the attention of the District representative.

IXX. CONTRACT CONSTRUCTION

19.1 All parties have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

XX. FAMILIARITY WITH LAW AND CONTRACT TERMS

20.1 Consultant represents that, prior to signing this Agreement; Consultant has become thoroughly acquainted with all matters relating to the performance of this Agreement, site conditions, all applicable laws, and all of the terms and conditions of this Agreement.

XXI. APPLICABLE LAW AND VENUE

21.1 This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

21.2 The obligations of the parties to this Agreement shall be performable in the county where the Project is located, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in that county.

XXII. SEVERABILITY

22.1 In the event any one or more paragraphs or portions of this Agreement are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this Agreement, but such shall be confined to the specific section, sentences, clauses or portions of this Agreement held invalid or unenforceable.

XXIII. FORCE MAJEURE

23.1 In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

XXIV. SUCCESSORS

24.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this Agreement, their assigns.

XXV. NON-WAIVER OF PERFORMANCE

25.1 A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged.

25.2 No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXVI. NO THIRD-PARTY BENEFICIARIES AND IMMUNITY

26.1 For purposes of this Agreement, including its intended operation and effect, the Parties specifically agree and contract that: (1) this Agreement only affects matters/disputes between the Parties to this Agreement, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with District or Consultant or both, or that such third parties may benefit incidentally by this Agreement; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either District or Consultant. Nothing in this Agreement shall be deemed to relinquish, waive, modify or amend any immunity or legal defense available at law or in equity. No provision of this Agreement is consent to suit.

XXVII. LEGAL AUTHORITY

27.1 The signer of this Agreement for District and Consultant each represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of District and Consultant respectively, and to bind District and Consultant to all of the terms, conditions, provisions and obligations herein contained.

XXVIII. CERTIFICATIONS

28.1 Pursuant to Texas Government Code Chapter 2270, if this contract is valued at \$100,000 or more and if the Architect has at least ten (10) full time employees, then the Architect, by its execution of this Agreement represents and warrants to the District that the Architect does not boycott Israel and will not boycott Israel during the term of this Agreement. This section does not apply to a sole proprietorship

Note: On April 25, 2019, the U.S. District Court for the Western District of Texas entered a preliminary injunction enjoining the enforcement of the then-current version of Texas Government Code Chapter 2270 in any state contract. After the date of the injunction, Chapter 2270 was amended to narrow its applicability and the new statutory requirement is as stated above. As the amended statute may not cure the entire breadth of issues addressed by the injunction, the Owner does not intend to seek enforcement of this statute until further order of the Court which issued the injunction or higher court having jurisdiction over the issue.

28.2 Pursuant to Texas Government Code Chapter 2270, the Consultant represents and warrants that it is not a foreign terrorist organization as identified on the list prepared and maintained by the Texas Comptroller of Public Accounts. If Consultant has misrepresented its inclusion on the Comptroller's list such omission or misrepresentation will void this Agreement.

28.3 By signing this Agreement, the undersigned certifies as follows: Under Section 231.006 of the Texas Family Code, to the extent applicable to this Agreement, the Consultant certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified payments and

acknowledges that this Agreement may be terminated and payment withheld in this certification is inaccurate.

XXIX. ENTIRE AGREEMENT

29.1 This Agreement, together with its Attachments embodies the complete Agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written consent of the parties.

29.2 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

EXECUTED ON THIS, THE _____ DAY OF _____, 2019.

LULING INDEPENDENT SCHOOL DISTRICT [CONSULTING ENGINEER]

By: _____ By: _____
Erin Warren ,Superintendent of Schools _____,
Federal Tax ID # _____

**ATTACHMENT A
Geotechnical Engineering Proposal
and Not to Exceed Base Price Estimate**

[TO BE ATTACHED AFTER NEGOTIATION – DO NOT ATTACH AT THIS STAGE]

**ATTACHMENT A-1
Schedule of Hourly Fees for Professional Geotech Services
and Expense Reimbursement Rates**

[TO BE ATTACHED AFTER NEGOTIATION – DO NOT ATTACH AT THIS STAGE]

**ATTACHMENT B
Construction Materials Testing and Observation Proposal
and Not to Exceed Base Price Estimate**

[TO BE ATTACHED AFTER NEGOTIATION – DO NOT ATTACH AT THIS STAGE]

**ATTACHMENT B-1
Schedule of Hourly Fees for Construction
Materials Testing and Observation Services
and Expense Reimbursement Rates**

[TO BE ATTACHED AFTER NEGOTIATION – DO NOT ATTACH AT THIS STAGE]

**RFQ EXHIBIT D
FELONY CONVICTION NOTIFICATION**

The Texas Education 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.

I, the undersigned agent for the firm named below, certify that the information concerning notification of felony conviction has been received by me and the following information furnished is true to the best of my knowledge.

Vendor’s Business Name _____

Authorized Company Official’s Name (Printed) _____

A. My firm is a publicly-held, stock-exchange corporation; therefore this requirement is not applicable.

Signature of Company Official: _____

Date Signed: _____

B. My firm is not owned or operated by anyone who has been convicted of a felony.

Signature of Company Official: _____

Date Signed: _____

C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony (printed name and general description of type of felony or felonies):

- 1. _____
- 2. _____
- 3. _____
- 4. _____

Signature of Company Official: _____

Date Signed: _____

**RFQ EXHIBIT E
NON-COLLUSION STATEMENT**

_____, being first duly sworn, deposes and says this:

(1) He is _____ of _____
(a partner or officer) (the firm of, etc.)

the Respondent who has submitted the attached Statement of Qualifications.

(2) He is fully informed respecting the preparation and contents of the attached Statement of Qualifications and of all pertinent circumstances respecting such Statement of Qualifications.

(3) That Statement of Qualifications is genuine and is not a collusive or sham response.

(4) Neither the said Respondent nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with another Respondent, firm or person, to submit a collusive or sham. Response in connection with the Contract for which the attached Statement of Qualifications has been submitted or to refrain from proposing in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion, or communication or conferences, with any other Respondent, firm or person to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Luling Independent School District of San Antonio, Texas or any person interested in the proposed contract; and,

(5) The price or prices which will be offered if selected as the successful Respondent in connection with this Request for Qualifications will be fair and proper and will not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Respondent or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(Respondent's Business Name): _____

(Respondent's Representative Signature) _____

(Respondent's Representative Title) _____

Subscribed and sworn to before me on this _____ day of _____, 2019.

NOTARY PUBLIC, STATE OF TEXAS

RFQ EXHIBIT F
SIGNATURE PAGE AND DECLARATION OF COMPLIANCE

Check (✓) the box that indicates business structure of Respondent.

Individual/Sole Proprietorship Partnership or Joint Venture Corporation Other Entity (State Type) _____

The undersigned certifies that (s)he is _____ (title) of the Respondent entity named below; that (s)he is authorized to sign this Statement of Qualifications (if a Corporation then by resolution with Certified Copy of resolution attached) for and on behalf of the entity, if any, named below, and that (s)he is authorized to execute same for and on behalf of and bind said entity to the terms and conditions provided for in the Proposal as required by this RFQ, and has the requisite authority to execute an Agreement on behalf of Respondent, if awarded, and that the 11-digit Comptroller's Taxpayer Number for the entity, if any, is:

11-digit Comptroller's Taxpayer Number

Employer Identification No.

Respondent Organization Name

By: _____

Printed Name: _____

Title: _____

By: _____

(If Respondent is a Joint Venture, an authorized signature from a representative of each party is required.)

Printed Name: _____

Title: _____

By signing this Signature Page and Declaration of Compliance, I do hereby declare that I have read the Request for Qualifications, on which our Qualifications Statement is submitted with full knowledge of the requirements, and do hereby agree to furnish all services in full accordance with the requirements outlined in the Request for Qualifications.

By signing and executing this Qualifications Statement, I further certify on behalf of my organization and represent to the Luling Independent School District that Respondent has not offered, conferred or agreed to confer any pecuniary benefit, as defined by **TEXAS PENAL CODE ANN. § 218**, or any other thing of value, as consideration for the receipt of information or any special treatment or advantage relating to this Qualifications Statement; the Respondent also certifies and represents that Respondent has not offered, conferred or agreed to confer a pecuniary benefit or other things of value as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion concerning this proposal; the Respondent certifies and represents that Respondent has neither coerced nor attempted to influence the exercise of discretion by any officer, trustee, agent or employee of the Luling Independent School District concerning this Qualifications Statement on the basis of any consideration not authorized by law; the Respondent also certifies and represents that Respondent has not received any information not available to other Respondent so as to give the undersigned a preferential advantage with respect to this proposal; the Respondent further certifies and represents that Respondent has not violated any state, federal or local law, regulation or ordinance relating to bribery, improper influence, collusion or the like and that Respondent will not in the future offer, confer, or agree to confer a pecuniary benefit or other thing of value to any officer, trustee, agent or employee of the Luling Independent School District in return for the person having exercised the person's official discretion, power or duty with respect to this Qualifications Statement; the Respondent certifies and represents that it has not nor and will not in the future offer, confer, or agree to confer a pecuniary benefit or other thing of value to any officer, trustee, agent or employee of the Luling Independent School District in connection with information regarding this Proposal, the submission of this Qualifications Statement, the award or performance of a contract in connection with this RFQ.