



**TRAVIS COUNTY EMERGENCY SERVICES DISTRICT 2
REQUEST FOR QUOTE 202401**

for

DISTRICT NEEDS ASSESSMENT AND FEASIBILITY STUDY

QUOTES DUE ON:

Wednesday, June 19, 2024, at 3:00 p.m. CST

TRAVIS COUNTY ESD 2
203 E PECAN ST
PFLUGERVILLE, TEXAS 78660

**REQUEST FOR QUOTES
FOR
TRAVIS COUNTY ESD 2
DISTRICT NEEDS ASSESSMENT AND FEASIBILITY STUDY
RFQ # 202401**

Dated: April 15, 2024

Travis County ESD 2 seeks quotes from qualified firms to provide a District needs assessment and feasibility study for the Pflugerville Fire Department. For clarification, the terms Travis County ESD 2, Pflugerville Fire Department and the District are used throughout this document and are interchangeable. The purpose of the study is to evaluate the condition of our existing facilities, identify needs and deficiencies thereof, and provide repair or renovation recommendations with a schedule that includes cost estimates for capital planning.

All addenda, notices, additional information will be posted on the District website at <http://www.pflugervillefire.org/purchasing/>

Responses should be sent to Purchasing at this email address:

purchasing@pflugervillefire.org

and the subject line should include

"District Needs Assessment and Feasibility Study, RFQ #202401"

The deadline to submit quotes is Wednesday, June 19, 2024 at 3:00 p.m. CST

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OVERVIEW

Travis County Emergency Services District No. 2, a governmental entity authorized under Texas statute, is a fire and first response medical provider within Travis County, Texas. The District currently has a population estimated at 162,000 people and covers approximately 77 square miles of northeast Travis County bordering the cities of Austin, Round Rock, Manor and Hutto. The city of Pflugerville lies within the District, with another large unincorporated subdivision known as Wells Branch in the western half of the District. The District is a taxing authority limited by statute to a maximum tax of ten cents per hundred dollars of property valuation, as well as a one-half cent sales tax. The District's fiscal year begins on October 1 and ends on September 30. Over 89 percent of the District's revenue comes from property tax and a portion of sales tax approved by the voters.

The District's vision is to continue as a financially stable organization that delivers a superior level of traditional and innovative emergency and non-emergency services. The District exists solely to improve the quality of life, health, and safety of our constituents. The District is full-service in that it provides all of the services normally expected from a fire department. Our District/Fire Department is as complex as all the functions and services it provides, including Fire Prevention, Fire Suppression/Rescue, and, First Response Emergency Medical Care including Advanced life support, Ambulance transport. The District is comprised of three major components or Divisions: Administration Staff Services; Emergency Operations; and Community Risk Reduction. While each Division works independently of each other, all Divisions must work together in order to meet the District's mission.

The District is currently served by personnel and equipment working out of eight fire stations , which are ready twenty-four hours a day and house the District's firefighters and fleet of firefighting apparatus.

The District's properties include the following:

Fire Stations

Fire Station #1 - 203 E Pecan Street, Pflugerville, TX 78660

Fire Station #2 - 15300 Bratton Lane, Austin, TX 78728

Fire Station #3 - 2301 Kelly Lane, Pflugerville, TX 78660

Fire Station #4 - 911 W Pflugerville Parkway, Pflugerville, TX 78660

Fire Station #5 - 1541 W Pflugerville Loop, Pflugerville, TX 78660

Fire Station #6 - 17221 Weiss Lane, Pflugerville, TX 78660

Fire Station #7 temporary building - 18412 Cameron Road, Manor, TX 78653

Fire Station #8 temporary building - 2021 Crystal Bend Dr, Pflugerville, TX 78660

Future Fire Station Location - 19915 FM973 North, Coupland, TX 78615

Facilities

Administration Building - 201 E Pecan Street, Pflugerville, TX 78660

Conference and Education Center (CEC) - 201B E Pecan Street, Pflugerville, TX 78660

Pfluger Hall - 203B E Pecan Street, Pflugerville, TX

Training Field - 18412 Cameron Road, Manor, TX 78653

Central Supply Facility - 911B W Pflugerville Parkway, Pflugerville, TX 78660

A permanent Fire Station is under construction at 18412 Cameron Road to replace temporary Fire Station #7. Construction of that project is concurrent with the expansion of the Training Field Facilities at that same location. New items included in the expansion include a concrete driving course, indoor Candidate Physical Ability Test (CPAT) area, indoor classroom facility, two-story clean burning (class B fueled)

live fire building and props, local replica structure simulators and a leadership reaction course. Temporary buildings need not be included in this study.

SCOPE OF WORK

Travis County ESD 2 is seeking a qualified firm with experience in proposing long-range solutions for fire stations and facilities. The District Needs Assessment and Feasibility Study must evaluate the future needs of the Pflugerville Fire Department. The work to be completed by the firm includes the following:

- Collaborate with District staff to gather information and to evaluate current and future needs as it pertains to fire stations and facilities.
- Conduct an operational efficiency evaluation and analysis of existing fire stations and facilities including inspection to identify existing building conditions such as structural integrity, facility design and layout, expansion opportunities, HVAC, energy efficiency, plumbing and electrical, space needs, etc., in order to provide repair or renovation recommendations with a schedule that includes cost estimates for capital planning.
- Prepare a draft report for review and comment by the Travis County ESD 2 Executive Team before submission of a final report.
- Provide electronic copies of all reports.
- Present final report to Travis County ESD 2 Board members at a regularly scheduled board meeting.

The consultant shall propose a meeting schedule based on the scope of work listed above. Travis County ESD 2 anticipates the need for the following meetings, either in person or via electronic methods:

- Initial project briefing with Travis County ESD 2 Executive Team to review scope of work, allowing all parties the opportunity to present data and information requests;
- Facility inspections;
- Meeting with Travis County ESD 2 Executive Team to review preliminary results and make adjustments before drafting final report; and,
- Board meeting to present final report.

A tour of the District will be provided for prospective bidders on Wednesday, May 15, 2024. **Interested parties will meet at the District's Administration office at 201 E Pecan St in Pflugerville at 1:00 p.m. CST.** All questions regarding this RFQ should be addressed to the Logistics Director, Glen Smith, by email at gsmith@pflugervillefire.org. The deadline for questions is Wednesday, May 22, 2024 at 5:00 p.m. CST. Answers will be posted on the District website at <http://www.pflugervillefire.org/purchasing/> by Friday, May 24, 2024 at 5:00 p.m. CST

Please examine all response documents carefully, as they will constitute the formal offer and contract upon awarding by the Travis County ESD 2 Board and execution by the Fire Chief or his designee.

Travis County ESD 2 reserves the right to reject all proposals and to waive defects, technicalities and informalities in the proposals received.

**OFFICIAL QUOTE RESPONSE FORM FOR
TRAVIS COUNTY ESD 2**

The information below should be submitted along with the proposed quote.

1. Quote response sheet;
2. A letter outlining the firm's background, with three references;
3. A brief summary of similar studies completed within the last five years, accompanied by contact information for the organizations studied;
4. A statement identifying what your study will include;
5. Names and brief CV of lead consultant and/or project manager that will be assigned to this project;
6. A proposed meeting schedule and project outline;
7. A timeline for project completion;
8. A "not to exceed" cost;
9. A list of additionally recommended study options, and cost for completing those options;
10. A recommendation for any other areas or items not listed in the study scope, that would be beneficial to the outcome of this study, and cost for each.

QUOTE RESPONSE SHEET

Respondent understands scope of work and is capable of rendering services as clearly defined and requested? YES _____ NO _____

Respondent's proposed cost of completion (in USD) for the project:

Respondent's proposed time to completion (in months) after starting:

Signed: _____

Printed name of Signature Authority: _____

Business name: _____

Business address: _____

Date: _____

EVALUATION CRITERIA

The District has established criteria for scoring. This section presents the evaluation criteria, description, and the total points available to each. Total points available are 100.

Detailed Statement of Qualifications - up to 5 points

The Respondent's ability to provide the desired goods and services, including capacity to achieve the project goals and objectives described in this RFQ.

Reference Interviews - up to 5 points

Highest points awarded to Respondents whose references provide positive feedback on reference interview questions.

Ability to meet RFQ requirements and Perform Required Services - up to 10 points

Highest points awarded to Respondents that clearly address all RFQ requirements including the Scope of Work.

Cost Proposal – up to 75 points

Highest points awarded for low cost/fee proposal.

Exceptions - up to 5 points

Exceptions to RFQ requirements and/or Terms and Conditions. Respondents with no exceptions will receive 5 points. Less points will be awarded to those with numerous and/or significant exceptions.

Terms and Conditions

By acceptance of a purchase order or agreement, or response to a solicitation, Respondent agrees the following terms and conditions, without modification, will govern:

Standard Terms and Conditions

Definitions

The following definitions shall be used to identify terms throughout procurement documents:

AGREEMENT/CONTRACT – A mutually binding legal document obligating the Vendor to furnish the goods, equipment or services specified within the solicitation and obligating the District to pay for the goods, equipment, or services specified.

BID/PROPOSAL/RESPONSE/OFFER/QUOTATION– A complete, properly signed response to a solicitation that, if accepted, would bind the Respondent to perform the resulting contract.

BIDDER/PROPOSER/RESPONDENT/OFFERER – The Respondent identified throughout the solicitation that they consider themselves qualified to provide the goods, equipment or services specified herein, and are interested in making an offer to provide the goods, equipment or services to The District.

District – Travis County Emergency Services District No. 2, Pflugerville Fire Department.

SERVICES – Work performed to meet the requirements and demand of a purchase order. The furnishing of labor, time, or effort by the Vendor and their ability to comply with promised delivery dates, specification and technical assistance specified.

SOLICITATION/INVITATION TO BID/REQUEST FOR PROPOSALS/REQUEST FOR QUOTES – The solicitation document issued by the District containing

terms, conditions and specifications for the service or commodity to be procured.

VENDOR/CONTRACTOR – Person or business enterprise providing goods, equipment, labor and/or services to the District as fulfillment of obligations arising from an agreement or purchase order.

Solicitations

Conflict of Interest

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code (HB 914) requires an entity contracting or seeking to contract for the sale or purchase of property, goods, or services with a local governmental entity to disclose any affiliation or business relationship which might create a conflict of interest with a local government entity. The Conflict of Interest Questionnaire is available from the Texas Ethics Commission at www.ethics.state.tx.us, and completed forms must be submitted to the appropriate records administrator of the District not later than the seventh business day after the date the entity begins contract discussions or negotiations with the local governmental entity, or submits to the local governmental entity an application, response to a Request for Proposals or Bids, correspondence, or another writing related to a potential Agreement with the local governmental entity. If responding to a Solicitation, the Conflict of Interest Form may be submitted with the Response. The completed forms may be mailed or hand delivered to the District. This legislation is subject to change and each entity should consult its own attorney regarding the current law. Any attempt to intentionally or unintentionally conceal a conflict of interest may result in disqualification of any response to a solicitation. The validity of the Contract is not affected solely because of failure to comply with the conflict of interest disclosure requirements.

Communications with the District

To insure the proper and fair evaluation of a Solicitation, the District prohibits ex parte communication (e.g., unsolicited) initiated by the Offeror to District Officials or Employees evaluating or considering the Responses

prior to the time an award has been made. Communication between Offerer and the District will be initiated by the appropriate District Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the Solicitation. Ex parte communication may be grounds for disqualifying the offending Offerer from consideration or award of the Solicitation then in evaluation, or any future Solicitation.

Unless otherwise specified, all requests for clarification or questions regarding a Solicitation must be directed to Travis County ESD No. 2, Attn.: Logistics Director, 203 East Pecan Street, Pflugerville, TX 78660, 512-251-2801, gsmith@pflugervillefire.org

DISCLOSURE OF PENDING LITIGATION:

Each Respondent shall include in its response a complete disclosure of any material civil or criminal litigation or pending investigation which involves the Respondent or in which the Respondent has been judged guilty.

CONFIDENTIALITY OF RESPONSES, PUBLIC INFORMATION ACT:

All Responses are subject to release as public information unless the Response or specific parts of the Response can be shown to be exempt from the Texas Public Information Act. Respondents are advised to consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or any other proprietary information. The District assumes no obligation or responsibility for asserting legal arguments on behalf of potential Respondents.

If a Respondent believes that a Response or parts of a Response are confidential, then the Respondent shall so specify. The Respondent shall stamp in bold red letters the term "CONFIDENTIAL" on that part of the Response, which the Respondent believes to be confidential. Vague and general claims as to confidentiality shall not be accepted. All Responses and parts of Responses that are not marked as confidential will be automatically considered public information. Notwithstanding, responses to Requests for Quotes shall be opened in a manner that avoids disclosure of the contents to competing offerer and keeps the quotes secret during negotiations.

CLARIFICATIONS, WAIVER OF MINOR TECHNICALITIES OR DISCREPANCIES:

The District reserves the right to request clarification or additional information specific to any response after all Responses have been received and the Solicitation due date has passed. Additionally, the District reserves the right to accept or reject all or part of any Response, waive any formalities or technical inconsistencies, delete any requirement or specification from the Solicitation, or terminate the Solicitation when deemed to be in District's best interest.

COST OF PREPARATION OF RESPONSE:

All costs directly or indirectly related to preparation of a Response to this Solicitation or any oral presentation required to supplement and/or clarify a Response which may be required by the District shall be the sole responsibility of the Respondent.

RESPONSES BECOME PROPERTY OF The District:

Proposals received in response to a Solicitation become the sole property of the District.

WITHDRAWAL OF A RESPONSE:

A Response may be withdrawn prior to the submission deadline by submitting a written request for its withdrawal to the Purchasing representative. A new Response may be submitted and must be received prior to the submission deadline to be considered. Modifications offered in any manner will not be considered if submitted after the submission deadline.

DETERMINATION OF AWARD, RESULTING AGREEMENT:

In determining award, the District reserves the right to select the acceptable Respondent who will offer contractual terms and conditions most favorable to the District. All requirements stated in the Solicitation shall become a part of any Contract, Agreement or Purchase Order awarded as a result of the Solicitation, and any deviations from these requirements must be specifically stated and defined by the Respondent in their Response. Requests for clarification and the responses(s) shall also become a part of any Contract, Agreement or Purchase Order resulting from the Solicitation.

AFFIRMATIONS AND CERTIFICATIONS:

By signature on and submission of a Response, Respondent certifies they have not conspired with any other potential supplier in any manner to attempt to control competitive pricing. By signature on and submission of a Response, Respondent certifies they are duly qualified, capable and a bondable business entity not in receivership or contemplating the same and has not filed for bankruptcy. By signature on and submission of a Response, Respondent affirms that they will not discriminate against any employee or applicant as prohibited by law.

REQUIREMENTS FOR SUBMISSION OF RESPONSE:

All Responses must be submitted in the form requested by the District and accompanied by all required attachments. Each Response shall be emailed to the District's Purchasing representative on or before the due date and time shown on the Solicitation form. Late Responses will not be considered.

If applicable, the Respondent will show exact cost to deliver goods/services. Responses must specify unit price on the quantity specified, extend and show total. Unit prices shall govern, including in case of errors. Pricing will be considered firm for acceptance for a minimum of 60 days after the due date unless otherwise specified in the Solicitation. The validity period may be extended beyond that date on agreement of parties. Cash discounts will not be considered in determining award; all cash discounts offered will be taken if earned. Respondents will list and deduct all discounts not based on early payment from prices quoted.

The District is exempt from all federal excise, state and local taxes unless otherwise stated. The District claims exemption from under Texas Tax Code §151.309, as amended. Texas Limited Sales Tax Exemption Certificates will be furnished upon request. Do not include taxes in Response to any Solicitation.

Unless stated otherwise, any catalog, brand name or manufacturer's reference used in the Solicitation is descriptive (not restrictive) and is used to indicate type and quality desired.

INSURANCE REQUIREMENTS:

Unless specific insurance requirements are noted, Vendor shall maintain standard insurance coverage. Upon request, Vendor shall provide a copy of its insurance policies to the District.

EXCEPTIONS TO SPECIFICATIONS:

Any deviation from the specifications must be clearly indicated in the Response to the Solicitation or promptly documented in writing at or before the time of the award. Any deviations or exceptions are subject to review by the District and may be grounds for rejection.

TRAVEL EXPENSES:

All travel, lodging and/or per diem expenses associated with providing the materials, equipment or services specified must be included in quote.

EMPLOYEES:

Vendors shall employ only orderly and competent workers, skilled in the performance of the Services which they will perform under the Agreement. Successful Proposer shall be responsible for conducting criminal background checks and verifying employment eligibility on all employees that will have access to District information.

Payment

TAX EXEMPT STATUS:

The District is exempt from all federal excise, state and local taxes unless otherwise stated in this document. The District claims exemption from all sales and/or use taxes under Texas Tax Code §151.309, as amended. Texas Limited Sales Tax Exemption Certificates are furnished upon request. Vendors will not charge for such taxes. If billed, The District will not remit payment until a corrected invoice is received.

INVOICING REQUIREMENTS:

Unless otherwise specified, all invoices shall be submitted to: Travis County ESD No. 2, Attn: Accounts Payable, 203 East Pecan Street, Pflugerville, TX 78660, or to accountspayable@pflugervillefire.org

RIGHT TO AUDIT:

The Vendor agrees that the representatives of the District shall have access to, and the rights to audit, examine, or reproduce, any and all records of the Vendor related to the performance under this Agreement. The Vendor shall retain all such records for a period of four (4) years after final payment on this Agreement or until all audit and litigation matters that the District has brought to the attention of the Vendor are resolved, or retention required by law, whichever is longer. The Vendor agrees to refund to the District any overpayments disclosed by any such audit.

FIRM PRICING:

The price shall remain firm for the duration of the Contract and extension periods. Vendor further certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

PRICE WARRANTY:

The Vendor warrants the prices quoted are not materially higher than the Vendors current prices on orders by others for like deliverables under similar terms of purchase. In addition to any other remedy available, the District may deduct from any amounts owed to the Vendor, or otherwise recover, any amounts paid for items materially in excess of the Vendor's current prices on orders by others for like deliverables under similar terms of purchase.

Additional Requirements

VENDOR'S OBLIGATION:

Vendor shall fully and timely provide all deliverables described in Solicitation, Vendor's Offer in strict accordance with the terms, covenants and conditions

of the Agreement and all applicable federal, state and local laws, rules and regulations.

DEFAULT:

Vendor shall be in default under the Agreement if the Vendor (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, (b) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (c) makes a material misrepresentation in Vendor's Offer, or in any report or deliverable required to be submitted by Vendor to the District.

TERMINATION/CANCELLATION:

TERMINATION FOR CAUSE:

In the event of default by the Vendor, the District shall have the right to terminate the Agreement for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Vendor, within such ten (10) day period cures such default, or provides evidence sufficient to prove to the District's satisfaction that such default does not, in fact, exist. In addition to any other remedies available under law or in equity, the District shall be entitled to recover all actual damages, costs, losses and expenses incurred by the District as a result of the Vendor's default, including without limitation, cost of cover, reasonable attorneys' fees, court costs and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of default by the Vendor, the District may remove the Vendor from the District's Vendor List and any Offer submitted by the Vendor may be disqualified for up to three (3) years. All rights and remedies under the Agreement are cumulative and not exclusive of any other right or remedy provided by law.

TERMINATION WITHOUT CAUSE:

The District shall have the right to terminate the Agreement, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Vendor shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The District shall pay the Vendor,

to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of termination in accordance with the terms hereof.

NON-APPROPRIATION:

The resulting Agreement is a commitment of the District's current revenues only. It is understood and agreed that the District shall have the right to terminate the Agreement at the end of any District fiscal year (September 30th) if the governing body of the District does not appropriate funds sufficient to purchase the estimated yearly quantities, as determined by the District's budget for the fiscal year in question. The District may effect such termination by providing the Vendor a written notice of termination at the end of its then current fiscal year.

CANCELLATION:

The District reserves the right to cancel the Agreement for default all or any part of the delivered portion of the deliverables if the Vendor breaches any term hereof including warranties or becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any remedies which the District may have in law or in equity.

FRAUD:

Fraudulent statements by the Vendor on any Offer or in any report or deliverable required to be submitted by the Vendor to the District shall be grounds for termination of the Agreement for cause by the District and may result in legal action.

INDEMNITY:

VENDOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE DISTRICT, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LEGAL PROCEEDINGS, CAUSES OF ACTION, CLAIMS, DEMANDS, DAMAGES, JUDGMENTS, LOSSES, LIENS, COSTS, EXPENSES, ATTORNEYS' FEES AND ANY AND ALL OTHER COSTS, FEES AND/OR CLAIMS OF ANY KIND OR DESCRIPTION ARISING OUT OF, IN CONNECTION

WITH OR RESULTING FROM THE AGREEMENT OR THE GOODS OR SERVICES PROVIDED UNDER THE AGREEMENT.

IF THE VENDOR AND THE DISTRICT ARE CONCURRENTLY NEGLIGENT, EACH PARTY'S LIABILITY SHALL BE LIMITED TO THAT PORTION OF NEGLIGENCE ATTRIBUTABLE TO IT AS DETERMINED UNDER THE APPLICABLE PROPORTIONATE RESPONSIBILITY RULES OF THE STATE OF TEXAS.

LIABILITY:

Any person, firm or corporation performing services pursuant to this Agreement shall be liable for all damages incurred while in the performance of such services. Vendor assumes full responsibility for the work to be performed hereunder and hereby releases, relinquishes, and discharges the District, its officers, agents and employees from all claims, demands and causes of action of any nature including the cost of defense thereof, for any injury to, including death of, any person whether that person be a third party, supplier or an employee of either of the parties hereto, and any loss of or damage to property, whether the same be that of either of the parties, caused by or alleged to have been caused by, arising out of or in connection with the issuance of the Agreement or Purchase Order to the Vendor and the negligence of the Vendor, whether or not said claims, demands and causes of action in whole or in part are covered by insurance. Certificates of insurance may be required for, but not limited to, Commercial General Liability, Business Auto Liability, Workers Compensation and Professional Liability Insurance.

INFRINGEMENT:

Vendor represents and warrants to the District that: (a) Vendor shall provide the District good and indefeasible title to the deliverables and (b) the deliverables supplied by the Vendor in accordance with the specifications of the Agreement shall not infringe, directly or contributory, any patent, trademark, copyright, trade secret or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Vendor does not know of any basis for any such claims. Vendor shall, at its sole expense, defend, indemnify and hold the District harmless from and

against all liability, damages and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (a) any claim that the District's exercise anywhere in the world of the rights associated with the District's ownership, and if applicable, license rights, and its use of the deliverable infringes the intellectual property rights of any third party; or (b) Vendor's breach of any of the Vendor's representations or warranties stated in this Agreement. In the event of any such claim, the District shall have the right to monitor such claim or, at its option, engage its own separate counsel to act as co-counsel on the District's behalf. Further, Vendor agrees that the District's specifications regarding the deliverables shall in no way diminish Vendor's warranties or obligations under this Section, and the District makes no warranty that the products, development or delivery of such deliverables will not impact such warranties of Vendor.

CONFIDENTIALITY:

In order to provide the deliverables to the District, Vendor may require access to certain of the District's and/or its licensors' confidential information (including, but not limited to, inventions, employee information, trade secrets, confidential know-how, confidential business information and other information which the District or its licensors consider confidential)(collectively, "Confidential Information"). Vendor acknowledges and agrees that the Confidential Information is the valuable property of the District and/or its licensors, and any unauthorized use, disclosure, dissemination or other release of the Confidential Information will substantially injure the District and/or its licensors. The Vendor (including its employees, subcontractors, agents or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate or otherwise use the Confidential Information without the prior written consent of the District, or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or as a result of an order of any court or other governmental authority with proper jurisdiction, provided the Vendor promptly notifies the District prior to disclosing such information so as to permit the District reasonable time to seek an appropriate protective order. The Vendor agrees to use protective

measures no less stringent than the Vendor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

CODES, PERMITS, LICENSES:

Vendor shall comply with all federal, state and local standards, codes and ordinances and the terms and conditions of the services of the electric utility, as well as other authorities that have jurisdiction pertaining to equipment and materials used and their application. None of the terms or provisions of the specification shall be construed as waiving any rules, regulations or requirements of these authorities. Vendor shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill contractual obligations to the District.

ADVERTISING and the District:

Vendor shall not advertise or otherwise publicize, without the District's prior written consent, the fact that the District has entered into the Agreement, except to the extent required by applicable law.

INDEPENDENT CONTRACTOR:

The Agreement shall not be construed as creating an employer/employee relationship, a partnership or joint venture. The Vendor's services shall be those of an independent contractor. The Vendor agrees and understands that the Agreement does not grant any rights or privileges established for employees of the District. Vendor shall not be within protection or coverage of the District's Worker Compensation insurance, Health Insurance, Liability Insurance or any other insurance that the District, from time to time, may have in force.

LIENS:

Vendor shall defend, indemnify and hold the District harmless from and against any and all liens and encumbrances for all labor, goods and services provided under this Agreement. At the District's request, the Vendor or its

subcontractors shall provide a proper release of all liens or satisfactory evidence of freedom from liens shall be delivered to the District.

ASSIGNMENT/DELEGATION:

The Agreement shall be binding upon and endure to the benefit of the District and the Vendor, and their respective successors and assignees, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Vendor without the prior written consent of the District. Any attempted assignment or delegation by the Vendor shall be void unless made in conformity with this Section. The Agreement is not intended to confer any rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third-party beneficiaries to the Agreement.

INTERPRETATION:

The Agreement is intended by both parties as the final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner fair to both parties, reading no provision more strictly against one party of the other. Whenever a term defined by the Uniform Commercial Code (the "UCC"), as enacted by the State of Texas, is used in the Agreement, the UCC definition shall control unless otherwise defined in the Agreement.

GOVERNING LAW AND VENUE:

This Agreement is made under and shall be governed by the laws of the State of Texas. This Agreement is fully performable in Pflugerville, TX, and the venue for any action related to this Agreement shall be Pflugerville, TX. All issues arising from this Agreement shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or the ability of the District to seek

and secure injunctive relief from any competent authority as contemplated herein.

SURVIVABILITY OF OBLIGATIONS:

All provisions of the Agreement that impose continuing obligations on the parties, including but not limited to the warranty, indemnity and confidentiality obligations of the parties, shall survive the expiration or termination of the Agreement.

CLAIMS:

If a claim, demand, suit or other action is asserted against the Vendor which arises under or concerns the Agreement, or which could have a material adverse effect on the Vendor's ability to perform thereunder, the Vendor shall give written notice to the District within ten (10) calendar days after receipt of notice by the Vendor. Such notice to the District shall state the date of notification of any such claim, demand, suit or other action; the names and address of the claimant(s); the basis thereof; and the name of each person against whom such claim is asserted. Such notice shall be delivered to the District at 203 East Pecan Street, Pflugerville, TX 78660.

GRATUITIES:

The District may, by written notice to the Vendor, cancel the Agreement without liability if it is determined by the District that gratuities were offered or given by the Vendor or any agent or representative of the Vendor to any officer or employee of the District with the intent of securing the Agreement or securing favorable treatment with respect to awarding or amending or the making of any determinations with respect to performing of the Agreement. In the event the Agreement is cancelled by the District pursuant to this Section, the District shall be entitled, in addition to any other rights and remedies, to recover the benefits or payments to the Vendor, as a result of the gratuities.

PERSONAL INTEREST PROHIBITED:

No officer, employee, independent consultant or elected official of the District who is involved in the development, evaluation or decision-making

process of the performance of the Solicitation shall have a financial interest, direct or indirect, in the resulting Agreement.

WAIVER:

No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Vendor or the District of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default(s), whether of similar or different character.

DISPUTE RESOLUTION:

If either the Vendor or the District has a claim, dispute or other matter in question for breach of duty, obligations, services rendered or any warranty that arises under this Agreement, the parties shall first attempt to resolve the matter through this dispute resolution process. The disputing party shall notify the other party in writing as soon as practicable after discovering the claim, dispute or breach. The notice shall state the nature of the dispute and list the party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both parties shall make a good faith effort, in person or through generally accepted means, to resolve any claim, dispute, breach or other matter in question that may arise out of, or in connection with, this Agreement. If the parties fail to resolve the dispute within sixty (60) days of the date of receipt of the notice of the dispute, then the parties may submit the matter to non-binding mediation upon written consent of authorized representatives of both parties in accordance with the Arbitration Rules of the American Arbitration Association or other applicable rules governing mediation then in effect. If the parties cannot resolve the dispute through mediation, then either party shall have the right to exercise any and all remedies available under law regarding the dispute.

INVALIDITY:

The invalidity, illegality or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace the stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.