

Augusta School Department

Invitation to Bid

Bid # 19-01

REQUEST FOR PROPOSAL

for

CONY CAMPUS FEASIBILITY STUDY
FOR EMERGENCY STAND-BY POWER

RFP Release Date
January 28, 2019

Proposal Submittal Deadline
February 26, 2019
2:00 p.m.

Questions with regard to submissions, process, or proposals
can be emailed to:

Jonathan Stonier
Director of Building and Grounds
Jon.stonier@augustaschools.org

REQUEST FOR PROPOSALS
for
CONY CAMPUS FEASIBILITY STUDY FOR EMERGENCY STAND-BY POWER

NOTICE IS HEREBY GIVEN that the Augusta School Department (ASD) is issuing this Request for Proposals (“RFP”) for preparation of a Feasibility Study for Stand-by Power at the Cony Campus.

Consultants are solely responsible for ensuring proposals are received by the ASD on or before the submittal deadline. **Proposals must be received no later than 2:00 p.m., on Tuesday, February 26, 2019 at the following address:**

Augusta School Department
Attn: Jon Stonier, Director of
Building and Ground
40 Pierce Drive, Suite 3
Augusta, Me 04330

An original copy must be signed by a representative authorized to bind the company. Proposals submitted by facsimile or email are not acceptable and will not be considered. **The original signed proposal and four (4) duplicates are to be submitted in sealed package with the name of the Consultant and RFP title “Cony Campus Feasibility Study for Emergency Stand-By Power” clearly marked on the outside of the package. A separately sealed envelope titled “Cost Proposal” shall be included within the Cony Campus Feasibility Study sealed envelope.**

Failure to comply with the requirements set forth in this RFP may result in disqualification. Proposals and/or modifications received subsequent to the hour and date specified above will not be considered. Submitted proposals may be withdrawn at any time prior to the submission time specified in this RFP, provided notification is received in writing before the submittal deadline. Proposals cannot be changed or withdrawn after the submittal deadline. No handwritten notations or corrections will be allowed. The responding Consultant is solely responsible for all costs related to the preparation of the proposal.

Mandatory Site Visit
February 12, 2018
10:00 a.m.
Cony High School
60 Pierce Drive
Augusta, Maine 04330

The ASD reserves the right to reject all proposals and to waive any minor informalities or irregularities contained in any proposal. Acceptance of any proposal submitted pursuant to this RFP shall not constitute any implied intent to enter into a contract.

The contract award, if any, will be made to the Consultant who, in the ASD sole discretion, is best able to perform the required services in a manner most beneficial to the ASD.

The RFP is available on the School Department website.(<http://www.augustaschools.org/departments/>)

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Attachment 1: Professional Services Agreement

Introduction

The Augusta School Department is accepting Proposals for a qualified professional firm to conduct a Feasibility Study for an emergency stand by power upgrade at the Cony Campus. The assessment will consist of a high level comprehensive schematic level, design study for options that will allow the high school to be fully utilized as a secondary emergency shelter and provide power to the schools central office. The deliverable will include a Basis of Design (BOD) with narrative supplemented with calculations, proposed product data sheets and sketches of plans one-line diagrams that would complement the narrative as necessary. The requirements for the Feasibility Study and the general conditions thereof are included in this document.

The RFP is intended to provide a common and uniform set of instructions to guide proposers through the development of proposals.

There is no expressed or implied obligation for the August School Department to reimburse responding firms for any expenses incurred in preparing proposals in response to this request. Materials submitted by respondents are subject to public inspection under the Maine Freedom of Access Act.

During the evaluation process, the August School Department reserves the right, where it may serve the School Department's best interest, to request additional information or clarification from proposers, or to allow corrections of errors or omissions. At the discretion of the Augusta School Department, firms submitting proposals may be requested to make oral presentations as part of the evaluation process.

The School Department reserves the right to retain all proposals submitted and to use any idea(s) in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the firm of the conditions contained in the request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the Augusta School Department and the firm selected.

It is anticipated the selection of a firm will be completed by March 8, 2019. Following the notification of the selected firm, a recommendation and proposed contract will be prepared for review and approval by James N. Anastasio, Superintendent . The Augusta School Department reserves the right to reject any or all proposals, to waive any non-material irregularities or information in any proposal, and to accept or reject any items or combination of items.

Proposals must be responsive to the Augusta School Department's request. The Augusta School Department shall determine the most responsive and qualified consultant providing the best service at the most reasonable cost. Cost alone shall not be the determinative factor.

The request for proposals does not obligate the Augusta School Department to award a contract or complete the project and the Augusta School Department reserves the right to cancel the solicitation if deemed in its best interest.

Background

The Cony Campus is located at 60 Pierce Drive. The facility was built in 2006 and was added onto the Capital Area Technical Center that has been in place since 1973. Both facilities share the ability to provide heat and hot water from one boiler room. The existing electrical service is a 3200 Amp Main with a 4000 Amp Bus MDP rated for 277/480 volt in a 3 phase, 4 wire configuration. This is all located in the main electrical room within Section E of the existing building with respective pad mounted utility service transformer at the front of the facility. There is an existing generator on the back side of the facility. It is a 500kW/625 kVA rated for 277/480 volt in a 3 phase, 4 wire configuration. This supports a 1000 Amp EDP and serves specifically designed portion of the existing power distribution system. Please note that the existing main telephone/computer room also supports important municipal needs for the city outside of the direct school needs.

Scope of Services

Overview

The project will have three (3) key phases.

Phase one (1) will be an on-site kick off meeting and brief facility tour of the High School.

Phase two (2) will be an on-site visit with the engineer in order to verify the information provided and confirm load characteristics.

Phase three (3) Completion of final report.

Phase One (1) – Needs Assessment

On-site kick off meeting and brief facility tour.

The needs assessment shall include, but not be limited to the following:

- A. Become familiar with the site and electrical distribution equipment orientation as well as make a connection with the facility contacts supporting the project. Review the available information that would either be transmitted electronically or received from the Superintendent's Office on the day of the kick-off meeting. This information would include current electrical distribution plans and metering data for the facility (12 months) to include peak demand.

Phase Two (2) – Site Evaluation

On-site visit with the engineer in order to verify the information provided and confirm load characteristics.

The site evaluation shall include, but not be limited to, the following:

- A. Engineer will review the provided information in preparation for an on-site visit to verify the information and confirm load characteristics.
- B. A follow up workshop meeting will be scheduled to review the findings with the facility staff and have a collaborative discussion about goals, needs future plans and related solutions.
- C. A draft report will be developed with solution recommendations for the available options which will include schematic one-line diagrams and initial equipment sizing.
- D. The Superintendent's office will have a period of time to review this information and a conference call can be scheduled to discuss any comments, concerns or suggestions.
- E. A solution option will be selected in order to carry forward to the final report.

Phase Three (3) – Conceptual Design

The Completion of the Final Report shall include, but not be limited to, the following:

- A. A final report will be completed that includes addressing the discussion points from the draft report and addressing the selected option.
- B. The final report will be reviewed by the Superintendent's Office and a conference call will be scheduled to address any outstanding items.
- C. A completed final report will be issued to include a schedule of construction values that will provide the Superintendent's Office with an opinion of probable cost which could be utilized for budgetary planning as related to the scope and solutions presented in the final report.

Deliverables

- A. Tabbed, spiral bound Feasibility Study Report with recommendations. Tabs for the report shall be determined during the process. Four (4) completed sets in hard copy format and one electronic version in .pdf format.
- B. The final report will include a schedule of construction values that will provide the Superintendent with the probable cost which could be utilized for budgetary planning as related to the scope and solutions in the final report.

Project Schedule

The ASD will not give verbal answers to clarifications regarding information in this RFP, or verbal instructions prior to the submission deadline. All clarifications shall be submitted in writing. A verbal statement regarding same by any person shall be non-binding. The ASD is not liable for any increased costs resulting from the Consultant accepting verbal directions. Any explanation desired by a Consultant must be requested of the ASD representative in writing no later than **February 19, 2019 at 4 p.m.**

Below is a desired schedule for initiation of this project; however dates may be subject to change and adjusted as necessary.

RFP Issued	January 28, 2019
Mandatory Site Visit*	February 12, 2019 at 10:00 a.m.
Deadline for submitting questions by email	February 19, 2019
Responses to Written Questions	February 22, 2019
Proposal Submittal Deadline	February 26, 2019 at 2:00 p.m.
Oral Interviews (conducted at ASD's discretion week of)	March 4, 2019
Contract award (no later than)	March 8, 2019

- * Location of mandatory site visit – Cony Campus, 60 Pierce Drive, Augusta, ME. 04330 Purpose – tour of the facility
No proposals shall be considered without Consultant present for the mandatory site visit.

Inquiries concerning the Request for Proposals and the subject of the Request for Proposals must be made to:

Jonathan Stonier
Director of Buildings and Grounds
jon.stonier@augustaschools.org

All pertinent inquiries received prior to **4 p.m. on February 19, 2019** will have answers emailed by **4 p.m. February 22, 2019.**

The Consultant may recommend other tasks that it deems appropriate to achieve the objectives set forth in this RFP.

The successful respondent shall be required to retain all working papers and related supporting documents, including records of professional time spent, for a period of five years after delivery of the required reports, unless notified in writing by the ASD of the need to extend the retention period. The Consultant further agrees to allow ASD staff to review such documents upon written request at any time during the retention period.

Submission of Proposal

Proposals submitted by facsimile or emails are not acceptable and will not be considered. The original signed proposal and four (4) duplicates are to be submitted in sealed package with the name of the Consultant, RFP title “Cony Campus Feasibility Study”, and bid number clearly marked on the outside of the package. **A separately sealed envelope titled “Cost Proposal” shall be included within the Cony Campus Feasibility Study sealed envelope.**

The Proposal shall be received by the Augusta School Department **by 2:00 p.m. on Tuesday February 26, 2019** for a proposal to be considered. The Proposal should address the items listed below. The Proposal should be addressed as follows:

**Augusta School
Department
40 Pierce Drive, Suite 3
Augusta, ME. 04330**

Proposal Content

The Consultant shall be responsible for preparing an effective, clear, and concise proposal. The Consultant shall submit one (1) bound original signed proposal, four (4) bound proposal copies and one USB electronic copy of the proposal, in a single PDF format. A 12-point font size is required for typed portion of sections 1-5, smaller fonts are acceptable for tables, charts, and exhibits. The proposal shall be typed and must contain no more than 20 typed pages. The conflict of interest statement, comments on or requested changes to contract, work schedule, and staff availability sections are not counted toward the 20 page limitation when inserted at the end of the proposal. The following information shall be included:

1. Letter of Interest: Please include a letter expressing the Consultant’s interest in being considered for the project. Include a statement regarding the consultant’s availability to dedicate time, personnel, and resources to this effort. The letter of interest must include a commitment to the availability of the Consultant and all key project staff to provide specified services. .
2. Project Understanding and Approach: Please include a statement demonstrating your understanding of the proposed project. Describe your approach to completing the project successfully; methodologies and technologies you would employ; key milestones and processes you would employ. Describe what information you would expect the ASD to supply.

3. Relevant Experience: Please include information describing the Consultant's experience with Facility Needs Assessments, including studies for public agencies. Please provide a minimum of five (5) specific examples of the Consultant's relevant experience with Facility Needs Assessments. At a minimum, the Consultant should provide a list of the most recent projects for which the Consultant has performed similar services of similar size, scope, and complexity. Include the name, contact person, address, phone number and e-mail of each party for whom the service was provided, as well as a description of the service performed, the dollar amount of the contract, and the date of performance.
4. Proposed Scope of Services: Please provide a Proposed Scope of Services, which is based on the Scope of Work contained in this RFP; and discuss any ideas for modifying, clarifying, or improving the ASD's proposed scope of work.
5. Conflict of Interest Statement: The firm shall disclose any financial, business, or other relationship with the ASD that may have an impact upon the outcome of this contract.
6. Comments on or Requested Changes to Contract: The ASD standard professional services agreement is included as Attachment 1 to this Request for Proposals. The proposing firm shall identify any objections to and/or request changes to the standard contract language in this section
7. Work Schedule: Provide a realistic proposed schedule designed to meet the ASD's objectives with key deliverables, milestones, and tasks, including dates for completion of the final reports. **Project shall be completed no later than April 30, 2019.**
8. Staff Availability: Provide resumes of key personnel who will be assigned to the delivery of the needs assessment.
9. Cost Proposal: In a **separate sealed envelope** marked "**Cost Proposal**" inserted within the Cony Campus Feasibility Study package, provide the following:
 - a. Total All-Inclusive Not To Exceed Maximum Price: The cost proposal should contain all pricing information relative to performing the scope of work as described in this request for proposals. The total all-inclusive maximum not to exceed price is to contain all direct and indirect costs including all out-of-pocket expenses. Provide a budget for each major milestone for the entire scope of services. The proposed budget should be inclusive of all meetings, conference calls, site visits and deliverables. The budget should include a list of anticipated reimbursable expenses with rates charged for each. **NOTE**: the All-Inclusive Not To Exceed Maximum Price does not include Phase Three (3) – Add Alternate
 - b. Compensation by position: The cost proposal shall include hourly rates of compensation by all positions associated with the project.

- c. Manner of Payment: Progress payment will be made on the basis of hours of work completed during the course of the engagement and out-of-pocket expenses incurred in accordance with the consultant's proposal. Interim billings shall cover a period of not less than a calendar month.

Format for Proposal

To facilitate the review of responses, all responses are required to adhere to the following requirements with regard to their proposal. The ASD strongly encourages respondents to ensure that RFP submissions are succinct and clearly organized. If the proposal is not in this format or does not include all of the listed items, it may be deemed non responsive. For ease of handling, all responses are to be provided in a standard 8 ½" x 11" portrait format with binding on the left hand edge.

1. Title Page showing the request for proposals subject; the firm's name; the name, address and telephone number of the contact person; and the date of the proposal.
2. Table of Contents identifying the materials submitted by section and page number.
3. Detailed Proposal following the order set forth in the Proposal Content.

Criteria for Selection

Proposals will be reviewed by ASD staff and evaluated to determine which proposals best meet the criteria of the RFP. Evaluation of the proposals by staff is expected to be completed by March 8, 2019 following the proposal submittal deadline. The final selection will be based on completeness, comparable experience, technical merit, and time to perform project.

The ASD reserves the right, without qualification, to:

1. Reject all proposals.
2. Exercise discretion and apply its judgment with respect to any proposal submitted.
3. Select proposals which qualify on the following factors with a maximum scoring potential for each factor as shown, for a maximum potential score of 100 points:
 - a. Project understanding and approach (30 pts)
 - b. Relevant experience (20 pts)
 - c. Project Team (20 pts)
 - d. Scope of Services (20 pts)
 - e. Cost (20 pts)

A recommendation for consultant selection will be made to the Superintendent of Schools based on Staff's "best value" evaluation of the proposals/qualifications, which will take into account the consultant's team's qualifications, comparable experience, availability to undertake the project, complete the tasks timely, deliver a high-quality work product, and the ability to comply with the ASD's professional services agreement.

All interested parties are encouraged to submit proposals to the RFP, as the award is not based solely on the lowest cost proposal submitted. Total cost will be taken into consideration, but the Consultant's capabilities, competence and capacity will be considered as well. The ASD reserves the right to choose the overall best firm according to the ASD's criteria. The ASD, and its designated representatives, shall be the sole judge of its own best interest, the proposal, and the resulting negotiated agreement. The ASD's decisions will be final.

The above factors, along with other factors that the ASD may deem appropriate, will be used to identify the proposal that represents the best value, which will be the basis for the contract award. The decision of whether to award a contract and selection of a consultant will be in the sole discretion of the School Board.

Special Conditions

Contract and Insurance Requirements

The selected consultant shall be required to enter into an ASD-prepared Professional Services Agreement approved by the Superintendent of Schools. Consultants shall be prepared to accept the terms and conditions of the ASD's Professional Services Agreement including all Insurance Requirements. The successful Consultant's bid and the terms and conditions stated in this RFP will be made part of the contract between the Augusta School Department and the Consultant. This RFP outlines the specifications and requirements, but not necessarily all of the terms and conditions that will be incorporated into the final agreement between the Augusta School Department and the successful Consultant.

- **General Liability.** Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. Consultant's general liability policies shall be primary and non-contributory to provide that the ASD and its officers, officials, employees, and agents shall be additional insureds under such policies.
- **Workers' Compensation.** Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). Consultant shall submit to the ASD, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the ASD, its officers, agents, employees, and volunteers.
- **Auto Liability.** Consultant shall provide auto liability coverage for owned, non-owned, and hired autos with a limit of no less than one million dollars (\$1,000,000) per accident. If Consultant owns no vehicles, this requirement may be met through a non-owned auto endorsement to the CGL policy
- **Professional Liability.** Consultant shall maintain professional liability insurance that insures against professional errors and omissions that may be made in performing the Services to be rendered in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement, and

Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement. The cost of such insurance shall be included in Consultant's bid.

Reservations.

This RFP does not commit the ASD to award a contract, to defray any costs incurred in the preparation of a proposal pursuant to this RFP, or to procure or contract for work. No payment of any kind will be provided to the Consultant responding to this RFP, or parties they represent, for obtaining any of the information solicited.

Public Records.

All proposals submitted in response to this RFP become the property of the ASD. Information in the proposal, unless specified as trade protected, may be subject to public review. Any information contained in the proposal that is proprietary must be clearly designated. Marking the entire proposal as proprietary will be neither accepted nor honored. Proprietary information submitted in response to this RFP will be handled in accordance with the Maine Freedom of Access Act.

Right to Cancel and Amend.

The ASD reserves the right to cancel, for any or no reason, in part or in its entirety, this RFP, including but not limited to: selection schedule, submittal date, and submittal requirements. If the ASD cancels or revises the RFP, all Consultants will be notified in writing.

Additional Information.

The ASD reserves the right to request additional information and/or clarification from any or all Consultants.

Conflict of Interest.

Consultant covenants that the company, its officers, employees and/or agents presently have no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services requested herein by the ASD. Consultant further covenants that, in the performance of any contract or agreement resulting from this RFP, no subcontractor or person having such an interest shall be employed. Consultant certifies that to the best of Consultant's knowledge, no one who has or will have any financial interest under any contract or agreement resulting from this RFP is an officer or employee of the ASD.

Release of Public Information.

Consultants who respond to this RFP who wish to release information to the public regarding selection, contract award or data provided by the ASD must receive prior written approval from the ASD before disclosing such information to the public.

Non-Assignment.

If a contract is awarded, the selected Consultant shall neither assign, nor delegate, in part or in whole, any duties without the prior written consent of the ASD which shall not be unreasonably withheld.

Collusion.

Each Consultant certifies that the company, its officers, employees and/or agents are not a party to any collusive action, fraud, or any action that may be in violation of the Sherman Antitrust Act. The Consultant certifies that the company, its officers, employees and/or agents have not offered or received any kickbacks or inducements from any other bidding Consultant, supplier, manufacturer, or subcontractor in connection with the proposal and that the company, its officers, employees and/or agents have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value. Any or all bids shall be rejected if there is any reason to believe collusion exists among the bidding Consultants. More than one bid from an individual, firm, partnership, corporation, or association under the same or different names may be rejected. Reasonable grounds for believing that a bidding Consultant has interest in more than one proposal for the work being proposed may result in rejection of all bids in which the bidding Consultant is believed to have interest.

Equal Employment Opportunity Compliance.

The selected Consultant shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Consultant shall take affirmative action to ensure that all employees and applicants for employment shall be treated with equality in all aspects of employment processes including, but not limited to, hiring, transfer, promotion, training, compensation and termination, regardless of their race, creed, color, sex, national origin, age, or physical handicap.

Right to Audit.

The selected Consultant shall maintain such financial records and other records as may be prescribed by the ASD or by applicable federal and state laws, rules, and regulations. The selected Consultant shall retain these records for a period of three years after final payment, or until they are audited by the ASD, whichever event occurs first. These records shall be made available during the term of the contract or service agreement and the subsequent three-year period for examination, transcription, and audit by the ASD or its designees.

Attachment 1

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE AUGUSTA SCHOOL
DEPARTMENT AND
[] FOR**

CONY CAMPUS FEASIBILITY STUDY FOR EMERGENCY STAND-BY POWER

THIS AGREEMENT is made and entered into this ____ day of ____ 2019, by and between the Augusta School Department, (herein referred to as “ASD”) and, a [_____] (herein referred to as “Consultant”).

RECITALS

A. WHEREAS, ASD proposes to have Consultant perform the services described herein below;

B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated and holds all necessary licenses to practice and perform the services herein contemplated;

C. WHEREAS, ASD has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement;

D. WHEREAS, ASD and Consultant desire to contract for specific services described below and desire to set forth their rights, duties and liabilities in the services to be performed; and

E. WHEREAS, no official or employee of ASD has a financial interest in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1. **Term.** The term of this Agreement shall commence upon execution of this Agreement and ASD issuance to Consultant a notice to proceed for all or a portion of the work and shall terminate upon ASD acceptance and payment for all or such portion of the work as was authorized by such notice, unless terminated earlier as set forth herein.

2. **Scope of Services.** Consultant shall provide the professional services described in the ASD Request for Proposal (“RFP”) and Consultant’s Response to ASD RFP (the “Proposal”). A copy of said RFP and Proposal is attached hereto as **Exhibit A** and incorporated herein by this reference.

Notwithstanding services described above, the ASD may request and Consultant may agree to perform other services. The scope of such services and compensation shall be agreed to in writing, signed by both parties and shall become a part of this Agreement.

2.1. All professional services shall be performed by Consultant or under Consultant's supervision. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional Consultants in accordance with sound professional practices.

2.2 Consultant acknowledges that ASD may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

3. **Time of Performance** Time is of the essence in the performance of services under this Agreement and Consultant shall perform the services in accordance with the Project Schedule attached hereto as **Exhibit B** and incorporated herein by reference. The failure by Consultant to strictly adhere to the schedule may result in termination of this Agreement by ASD.

Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the services to be provided for the Project, each party hereby agrees to provide notice to the other party so that all delays can be addressed.

4. **Compensation.** ASD shall pay Consultant for the services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Pricing Proposal submitted by Consultant attached hereto as **Exhibit C** and incorporated herein by reference. Consultant's compensation for all work performed in accordance with this Agreement, including all reimbursable items and sub Consultant fees, shall not exceed [\$_____] unless authorized in writing by the ASD and approved by the Superintendent.

4.1 Consultant shall submit monthly invoices to ASD describing the work performed the preceding month. Consultant's bills shall include the name of the person who performed the work, a brief description of the services performed and the specific Task in the Scope of Services to which it relates, the date the services were performed, the number of hours spent on all work billed on an hourly basis, and a description of any reimbursable expenditures. No billing rate changes shall be made during the term of this Agreement without the prior written approval of ASD. ASD shall pay Consultant no later than thirty (30) days after receipt of the monthly invoice by the ASD.

4.2 Consultant shall not receive any compensation for Additional Work without the prior written authorization of ASD. As used herein, "Additional Work" means any work that is determined by ASD to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Additional Work shall be billed in accordance with the Billing Rates as set forth in **Exhibit C** and on the terms set forth in this

5. **Contract Administration.** The Superintendent shall have the authority to act for ASD under this Agreement. The Superintendent or his/her authorized representative shall represent ASD in all matters pertaining to the services to be rendered pursuant to this Agreement. Consultant shall designate a representative for purposes of this Agreement who shall have the authority to act for Consultant under this Agreement.

6. **Indemnification.** When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless ASD and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant (and its Sub consultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Sub consultants) and the ASD in the performance of professional services under this agreement.

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless ASD, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or ASD for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant.

Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the active negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant.

In the event the ASD indemnities are made a party to any action, lawsuit, or other adversarial proceeding arising from Consultant's performance of this agreement, the Consultant shall provide a defense to the ASD indemnities, or at the ASD's option, reimburse the ASD indemnities their costs of defense, including reasonable legal counsels' fees, incurred in defense of such claims.

7. **Insurance.** Without limiting Consultant's indemnification of ASD, and prior to commencement of work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, a policy or policies of liability insurance of the type and amounts described below and in a form satisfactory to City.

A. **Certificates of Insurance.** Consultant shall provide certificates of insurance with original endorsements to ASD as evidence of the insurance coverage required herein. Insurance certificates must be approved by the Business Manager prior to commencement of performance or issuance of any permit. Current certification of insurance shall be kept on file with ASD at all times during the term of this Agreement.

B. **Signature.** A person authorized by the insurer to bind coverage on its behalf shall sign certification of all required policies.

C. **Acceptable Insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of Maine, with an assigned policyholders' Rating of A (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the Business Manager.

D. **Coverage Requirements.**

i. **Workers' Compensation Coverage.** Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). Consultant shall submit to ASD, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of ASD, its officers, agents, employees, and volunteers.

ii. **General Liability Coverage.** Consultant shall maintain commercial general liability insurance with coverage in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. Consultant's general liability policies shall be primary and non-contributory to provide that ASD and its officers, officials, employees, and agents shall be additional insureds under such policies.

iii. **Automobile Liability Coverage.** Consultant shall provide auto liability coverage for owned, non-owned, and hired autos with a limit of no less than one million dollars (\$1,000,000) per accident. If Consultant owns no vehicles, this requirement may be met through a non-owned auto endorsement to the CGL policy.

iv. **Professional Errors and Omissions Insurance.** Consultant shall maintain professional liability insurance that insures against professional errors and

omissions that may be made in performing the Services to be rendered in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement, and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement. The cost of such insurance shall be included in Consultant's bid.

E. Endorsements. Each general liability and automobile liability insurance policy shall be endorsed with the following specific language:

i. The ASD, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant.

ii. This policy shall be considered primary insurance as respects to ASD, its elected or appointed officers, officials, employees, agents and volunteers as respects to all claims, losses, or liability arising directly or indirectly from the Consultant's operations or services provided to ASD. Any insurance maintained by City, including any self-insured retention ASD may have, shall be considered excess insurance only and not contributory with the insurance provided hereunder.

iii. This insurance shall act for each insured and additional insureds as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. The insurer waives all rights of subrogation against ASD, its elected or appointed officers, officials, employees, agents and volunteers.

v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to ASD, its elected or appointed officers, officials, employees, agents or volunteers.

vi. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, by either party except after thirty (30) calendar days (10 calendar days written notice of non-payment of premium) written notice has been received by ASD.

8.1 Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

8. **Nondiscrimination.** In the performing of this Agreement, Consultant shall not discriminate against any subcontractor, employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation race, religion, color, national origin, handicap, ancestry, sex or age.

9. **Independent Contractor.** It is understood that ASD retains Consultant on an independent contractor basis and Consultant is not an agent or employee of ASD. The manner and means of conducting the work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of ASD. Consultant shall have the responsibility for and control over the means of performing the work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give ASD the right to direct Consultant as to the details of the performance or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of ASD with respect to the results of the services.

10.1 The Consultant shall at all times remain an independent Contractor with respect to the services to be performed under this Agreement and shall be responsible for the payment of Federal and State Employer Withholding Taxes, Unemployment Insurance Taxes, FICA Taxes, Retirement, Life and/or Medical Insurance, and Worker's Compensation Insurance for the employees of the Consultant or any other person performing services under this Agreement. Consultant and its employees are not entitled to the rights or benefits afforded to ASD employees, including disability or unemployment insurance, workers' compensation, medical insurance, sick leave, or any other employment benefit. Consultant agrees to indemnify and hold ASD harmless from any claims, costs, losses, fees, penalties, interest, or damages suffered by ASD as a result of any claim by any person or entity contrary to the provisions of this Section 10.

10. **Ownership of Documents.** All documents, information and materials of any and every type prepared by the Consultant pursuant to this Agreement shall be the property of the ASD. Such documents shall include but not be limited to all findings, reports, documents, information and data including, but not limited to, electronic media, computer tapes or discs, files, and tapes furnished or prepared or accumulated by the Consultant in performing work under this Agreement, whether completed or in process.

11. **Confidentiality.** All ASD information disclosed to Consultant during the course of performance of services under this Agreement shall be treated as confidential and shall not be disclosed to any other persons or parties except as authorized by ASD, excepting that information which is public record and subject to disclosure pursuant to the Freedom of Access Act, or otherwise required by law. All documents, including drafts, notes and communications that result from the services in this Agreement, shall be kept confidential unless ASD authorizes in writing the release of information, excepting that information which is public record and subject to disclosure pursuant to the Public Records Act, or otherwise required by law.

12. **Access to Records.** Consultant shall maintain all books, records, documents, accounting ledgers, and similar materials relating to work performed for ASD under this Agreement on file for at least three (3) years following the date of final payment to Consultant by ASD. Any duly authorized representative(s) of ASD shall have access to such records for the purpose of inspection, audit and copying at reasonable times, during Consultant's usual and customary business hours. Consultant shall provide proper facilities to ASD representative(s) for access and inspection. Consultant shall be entitled to reasonable compensation for time and expenses relate to such access

and inspection activities, which shall be considered to be an additional service to the ASD, subject to the provisions of Section 4 hereinabove.

13. **Assignment.** This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of ASD. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

14. **Compliance with Laws, Rules, Regulations.** Consultant shall perform the services required by this Agreement in compliance with all applicable Federal and Maine employment laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless ASD from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against ASD for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

15. **Integration; Amendment.** This Agreement represents the entire understanding of ASD and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in it. This Agreement may not be modified or altered except by amendment in writing sign by both parties.

16. **Severability.** If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of the Agreement shall continue to be in full force and effect.

17. **Waiver/Validity.** Consultant agrees that waiver by ASD of any one or more of the conditions of performance under this Agreement shall not be construed as waiver of any other condition of performance under this Agreement. The acceptance by the ASD of the performance of any work services by Consultant shall not be deemed to be a waiver of any term or condition of this Agreement.

18. **Jurisdiction.** ASD and Consultant agree that the law governing this Agreement shall be that of the State of Maine. Any suit brought by either party against the other arising out of the performance of this Agreement shall be filed and maintained in the County of Kennebec.

19. **Notice.** Any notices required to be given pursuant to this Agreement shall be deemed to have been given by their deposit, postage prepaid, in the United States Postal Service, addressed to the parties as follows:

To ASD:

Augusta School Department
40 Pierce Drive, Suite 3
Augusta, Maine 04330
Attn: James N. Anastasio
Superintendent

To Consultant:

[CONSULTANT]
[ADDRESS]
[CITY, STATE, ZIP]
Attn: [NAME]

Nothing hereinabove shall prevent either ASD or Consultant from personally delivering any such notices to the other.

20. **Termination.** ASD may, in its sole discretion, terminate this Agreement at any time and for any reason whatsoever by giving written notice of such termination to Consultant. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the ASD. In the event of such termination, Consultant shall be entitled to compensation for all services rendered and work performed for ASD to the date of such termination.

21. **Order of Precedence.** In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of the RFP or the Response, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over both the Response and the RFP and the Response shall govern over the RFP.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

[CONSULTANT]

Date: _____, 2019

by: **[NAME AND TITLE]**

Augusta School Department

Date: _____, 2019

by: **James N. Anastasio, Superintendent**

