

CONTINUING SERVICE CONTRACT
GEOTECHNICAL ENGINEERING, MATERIALS TESTING, AND THRESHOLD INSPECTION SERVICES

THIS CONTINUING SERVICE CONTRACT (the "Contract"), made this ___ day of _____, 20___, between **THE SCHOOL BOARD OF OSCEOLA COUNTY** (hereinafter referred to as "School Board" or "Owner"), and _____ (hereinafter referred to as "Consultant"), a corporation with its principal office located at _____.

WHEREAS, School Board desires to obtain Geotechnical Engineering, Materials Testing, and Threshold Inspection Services Consultant for assigned projects in Osceola County, Florida (hereinafter referred to as "Continuing Service Projects") and issued RFQ# SDOC-_____-FPC to find qualified professionals to fulfill the need for these services. Pursuant to Section 287.055, Florida Statutes, Consultants' Competitive Negotiation Act (CCNA), the total construction cost of each individual project shall not exceed \$2,000,000.00; and the cost for studies shall not exceed \$200,000.00. Although the primary professional service sought by the Contract is for Geotechnical Engineering, Materials Testing, and Threshold Inspection Services, this Contract may cover other professional services if Consultant possesses the professional licensing and registration to legally perform these services. Further, Consultant may hire others who are properly licensed to perform professional services; and

WHEREAS, the Term of Contract is three (3) years after School Board approves the Contract, and School Board may, at its option, at a regular or special Board meeting, renew this Contract at the end of the Term for an additional, renewal term of two (2) years for a maximum term of five years; and

WHEREAS, School Board retains Consultant, to perform the services described herein, and other required professional services on an "as needed" basis, as designated, authorized, and assigned by School Board, and School Board agrees to compensate Consultant for such services in accordance with this Contract; and

WHEREAS, it is the primary intent of this Contract to ensure that Consultant is available to provide professional services, in accordance with prior, mutually agreed upon conditions, and School Board has complied with all requirements of the Consultants Competitive Negotiations Act, in the selection of Consultant and in negotiations for this Contract; and

WHEREAS, the School Board has approved a Local Business Preference and Training Initiative to encourage local business participation.

NOW, THEREFORE, School Board and Consultant, for and in consideration of the provisions, mutual promises, covenants and conditions hereinafter set forth or recited, agree as follows:

1. **Recitals.** The recitals in the WHEREAS clauses are incorporated by reference and made a part of this Contract.
2. Request for Qualifications (RFQ) # _____ and the Consultant's response thereto are incorporated into this Contract by reference. In the event of any conflict between the relevant documents, any such conflict shall be resolved by first looking to this Contract, second looking to the Consultant's response and third looking to the RFQ.
3. **Scope of Services.**
The Consultant's services consist of those services performed by the Consultant, Consultant's employees, and Consultant's Sub-Consultants. The Scope of Services (hereinafter referred to as "Basic Services") to be performed by Consultant under this Contract, to the satisfaction of School

Board, shall be identified in Exhibit A- Scope of Services. Consultant agrees to furnish and perform Basic Services as may be required in the specific scope of work and enumerated and described in Exhibit A- Scope of Services, in connection with Continuing Service Projects. Consultant further agrees to furnish and perform professional services not included as Basic Services (hereinafter referred to as "Additional Services"), when and if such Additional Services are requested and authorized by School Board, in writing. The Unit Labor Rates for Basic and Additional Services is found in Exhibit B- Unit Labor Rates. No Additional Services shall be furnished by Consultant unless specifically requested and authorized by School Board.

All services rendered by the Consultant shall be conducted by persons properly licensed and certified in accordance with Florida Statutes and other applicable rules and regulations. Proof of certification for each individual providing services shall be provided by the Consultant to the School Board's representative prior to services being rendered.

4. **Changes by the Owner.**

If the Owner changes the Project Schedule or any substantial aspect of the Scope of the Project, the fees and schedule contained in this Agreement shall be renegotiated in good faith.

5. **Time of Completion.** Consultant shall commence Basic Services upon receipt of the Notice to Proceed and a purchase order issued by School Board. Consultant shall include in its proposal a schedule for the successful and timely completion of the project. Project schedule shall include the proposed start date, substantial completion date, and final completion date. The schedule will be agreed upon on a project by project basis. Consultant shall complete work in accordance with the schedule, it being understood that time is of the essence in this Contract. Consultant shall accelerate performance of Basic Services and Additional Services in the manner directed by School Board, in the event School Board, in its sole discretion, determines that such acceleration is necessary to maintain the Schedule. If acceleration is required as a result of delays caused solely by Consultant, acceleration shall be at no cost to School Board. If acceleration is required as a result of delays partially caused by Consultant, the School Board will not compensate Consultant for the delay caused by Consultant; however, the portion of any such delay not caused by Consultant shall be compensated as an Additional Service.

6. **Fees.** School Board agrees to pay to Consultant for Basic Services, as set forth in Exhibit A- Scope of Services, a fixed fee based upon an approved written proposal for the work. Based upon Exhibit B- Unit Labor Rates for a specific project, Consultant will give School Board a detailed written proposal for the work, which shall be in the format described in Exhibit C- Task Assignment, and shall identify the number of hours of work by category of workers performing the service. The categories must accurately reflect the type of service to be performed, not merely the job description of the employee performing the service. No additional fee or compensation shall be payable to Consultant under this Contract for said services if the actual cost of construction or work to be designed by Consultant exceeds the proposal or budget. This Contract does not allow for the payment to the Consultant for any reimbursable expenses.

- (a) Initiation of services shall be upon receipt of the Notice to Proceed and a purchase order basis, referencing a written proposal for services related to this Contract.
- (b) Invoices received by the Facilities Division on or before the 20th of any month will be submitted for check release on or before the 25th of the following month.
- (c) The responsibility of Consultant for performing its obligation under this Contract and under the construction contract(s) is not relieved or affected in any respect by the

presence of or inspection by employees or agents of School Board. Consultant agrees that the responsibility assumed by it for approving and certifying work for payment is not shared by an employee of School Board.

- (d) Consultant's fee for Additional Services will be computed in accordance with hourly rates as described in Exhibit B- Unit Labor Rates. If any additional services are rendered or furnished by professional consultants engaged by Consultant, and such additional services consist of normal services for which Consultant would be entitled to an additional fee if it had furnished the services, then School Board shall reimburse Consultant for such actual reasonable amounts paid by Consultant to such consultants for such additional services, and Consultant shall not be entitled to any additional fee or compensation.
- (e) Additional services which require no work on the part of Consultant, other than administering the work of a consultant, that is, securing the services, approving the work, and invoicing on behalf of the consultant, the Consultant may request five percent (5%) markup on the consultant's fee to cover its administrative costs.
- (f) 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 Contract, and that Consultant has not paid or agreed to pay any person, company, corporation, individual, or firm other than bona fide employees working solely for Consultant, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, School Board shall have the right to terminate this Contract without liability and, at its discretion, deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or other consideration.
- (g) The fee structure and hourly rates may be revised only by written Task Assignment, agreed to by both parties to this agreement.

7. **Ownership of Documents.** Consultant shall make available to School Board all reproducible copies of plans, drawings, specifications, ideas, concepts, designs, sketches, models, artwork, programs, software, reports, or other tangible work product produced, originally developed, or submitted to School Board by Consultant pursuant to this Contract (hereinafter referred to as the "Original Work Product").

- (a) Consultant shall deliver reproduced copies of all Original Work Product to School Board upon completion, unless it is necessary for Consultant, in School Board's sole discretion, to retain possession for a longer period of time. Upon early termination of Consultant's services, Consultant shall deliver all Original Work Product, whether complete or not. School Board shall have the right to use any and all work product. Consultant shall retain copies for its permanent records; however, the same cannot be used without School Board's prior express written consent. Consultant agrees not to recreate any designs, or any other tangible work product contemplated by or originally developed under this Contract, or portions thereof, which if constructions or otherwise materialized, would be reasonably identifiable with the tangible work product originally developed by Consultant. If said work product is used by School Board for any purpose other than that purpose which is intended by this Contract, the School Board shall indemnify Consultant from any and all claims and liabilities which may result from such reuse, in the event Consultant does not consent to such reuse.

- (b) School Board exclusively retains all ownership and manufacturing rights to all materials or designs developed under this Agreement. To the extent the Services performed under this Agreement produce or include copyrightable or patentable materials or designs, such materials or designs are work made for hire for School Board as the author, creator, or inventor thereof upon creation, and School Board shall have all rights therein including, without limitation, the right of reproduction, with respect to such work. Consultant shall assign to School Board, all rights without limitation, including the copyright with respect to such work. The Consultant acknowledges that Owner is the motivating factor for, and for the purpose of copyright or patent, has the right to direct and supervise the preparation of such copyrightable or patentable materials or designs.

8. **Insurance.**

- (a) Consultant shall, through the performance of its services pursuant to this Contract, maintain and provide to School Board within 10 days after the date of this Contract a certificate of insurance proving it has the following described insurance coverage's:
1. Professional liability insurance (including coverage for the Schedule of Fees and Services to be performed under this Agreement), for protection from negligent acts, errors, and omissions of Consultant from or in connection with the performance of Consultant's services. Consultant must maintain a comprehensive liability policy, including errors and omissions coverage, issued to Consultant as the insured. Said policy shall be issued and underwritten by a licensed insurer, licensed as such in the State of Florida. Said policy shall provide coverage for the acts or omissions of Consultant in a minimum amount of \$1,000,000.00 per claim. Said comprehensive professional liability policy shall be underwritten by an insurer who, in the most current edition of Best's Key Rating Guide, has (1) a rating classification of either "A-", "A," or "A," and (2) a financial size category rating of Class IV or higher. If Consultant maintains "claims-made" policies, Consultant shall obtain and pay for a reporting endorsement or "tail" coverage that shall extend coverage for a period of four (4) years after the termination of this Agreement or any extension thereof.
 2. Commercial general liability insurance (including broad form contractual coverage), with minimum limits of \$1,000,000.00 per occurrence and \$2,000,000.00 per annual aggregate (per policy year) liability for protection from claims for bodily injury (including death) and property damage which may arise from or in connection with the performance of Consultant's services hereunder or from or out of any act or omission of Consultant, its sub consultants, and their officers, directors, agents, and employees.
 3. Automobile liability insurance with minimum limits of \$1,000,000.00 per accident bodily injury and property damage.
 4. Workers' compensation insurance as required by applicable Florida law, or employer's liability insurance with respect to any employee not covered by workers' compensation with minimum limits of \$1,000,000.00 per accident.
- (b) All such insurance required in paragraph (a) shall be with companies and on forms acceptable to School Board, shall name School Board, School Board's representatives,

and its agents, employees, and assigns as additional insured, except as otherwise provided by law. The policies shall provide that the coverage may not be reduced or canceled unless 30 days' prior written notice is furnished to School Board. Certificates of insurance and copies of all policies shall be furnished to School Board within 10 days of the date of this Contract. In the event of any cancellation or reduction of coverage, Consultant shall obtain substitute coverage as required hereunder, without any lapse of coverage to School Board whatsoever.

- (c) Consultant shall defend (if required by School Board), indemnify and hold School Board, School Board's representatives, its agents, employees, and assigns each harmless for and against any and all claims, demands, suits, judgments, damages to persons or property, injuries, losses, or expenses of any nature whatsoever (including attorneys' fees) arising directly or indirectly from or out of any negligent act or omission of Consultant, its sub consultants, and their officers, directors, agents, or employees, any failure of Consultant to perform its services hereunder in accordance with generally accepted professional standards, any material breach of Consultant's representations as set forth in this Contract or any other failure of Consultant to comply with the obligations on its part to be performed hereunder. The provisions of this paragraph shall survive the expiration or termination of this Contract.
- (d) Consultant will provide to School Board, within 10 days after the date of this Contract, (1) the original of the policy evidencing the existence of such insurance coverage, which School Board shall copy and return to Consultant within 7 days, (2) proof acceptable to School Board that the premium for such policy for a period ending no earlier than 6 months after the date of this Contract has been paid in full by Consultant, and (3) a certificate of the insurer addressed to School Board evidencing the existence of such insurance coverage. Consultant will promptly renew, will keep and maintain in full force and effect, and will pay all premiums becoming due on said policy of insurance, and without request or demand Consultant will promptly provide proof thereof to School Board. If any such policy of insurance is a "claims made" policy, and not an "occurrence" policy, Consultant agrees to keep and maintain same in full force and effect for a period expiring not earlier than 12 months after construction of Continuing Service Projects is completed, and each such policy, or renewal or replacement policy, shall provide coverage for the acts and omissions of Consultant for all times subsequent to the date of this Contract.

9. **Representations.** Consultant hereby represents to School Board that:

- (a) It has the experience and skill to perform the services required to be performed by this Contract.
- (b) It shall provide and employ, in connection with the performance of such services, personnel qualified and experienced in their profession; it being understood that School Board may at any time require Consultant to remove, and Consultant shall immediately remove, any person employed in connection with the performance of the services who in the sole opinion of School Board is unfit for the proper performance of his/her duties.
- (c) It shall design to and comply with applicable federal, state, and local laws, and codes, including without limitation, professional registration and licensing requirements (both corporate and individual for all required basic disciplines) in effect during the term of this

Contract, and shall, if requested by School Board, provide certification of compliance with all registration and licensing requirements.

- (d) It shall perform said services in accordance with generally accepted professional standards in the most expeditious and economical manner, and to the extent consistent with the best interests of School Board.
- (e) It is adequately financed to meet any financial obligations it may be required to incur under this Contract.
- (f) The work product of Consultant shall not call for the use of nor infringe any patent, trademark, service mark, copyright, or other proprietary interest claimed or held by any person or business entity absent prior written consent from School Board and such other person.

10. **Documents and Copies.** Consultant agrees to furnish and provide to School Board, for each project, a minimum three (3) copies of all reports, and other documents (except correspondence) prepared by Consultant under this Contract, at its own expense. The copies shall be furnished as they are prepared and completed by Consultant, and if School Board requires additional copies, Consultant shall promptly furnish the copies to School Board at a reasonable cost for the reproduction.

11. **Expense Records.** Consultant agrees to keep and maintain all of its direct personnel expense records, consultant expense records and other expense records, pertaining to Continuing Service Projects, and its record of accounts between Consultant and School Board pertaining to Continuing Service Projects, on a general recognized and acceptable accounting basis, and the same shall be available to School Board or its authorized representatives at all reasonable times for inspection and copying. The records and documentation shall be retained by Consultant for a minimum of three (3) years from the date of termination of this Agreement or the date the Task Authorization is completed, or such longer period of time as may be required by this Agreement or law, whichever is later. Consultant agrees to keep and maintain accurate time records to within the nearest one-tenth of an hour for each time entry, of all work performed by employees of Consultant, and same shall be available to School Board or its authorized representatives at all reasonable times for inspection and copying.

12. **Termination, Suspension, Disputes, or Abandonment.** Either party may terminate this Contract for failure of the other party to substantially perform this Contract. School Board shall have the absolute right and option to suspend or terminate this Contract without cause provided that 30 days written notice is provided to Consultant.

- (a) If Continuing Service Projects are abandoned or suspended by School Board, School Board shall pay Consultant all fees which have become due and payable to Consultant for that portion of the work of Consultant completed prior to such abandonment or suspension, and School Board shall have no further obligation to Consultant for payment to Consultant of the remainder of its fees, unless and until Continuing Service Projects are resumed by School Board. Consultant, at the option of School Board, shall complete the services of Consultant under this Contract upon resumption by School Board of Continuing Service Projects, and Consultant shall in that event be entitled to payment of the remaining unpaid fees which become payable to it under this Contract, same to be payable at the times and in the manner specified in this Contract. In no event will any fee or part thereof become due or payable to Consultant under this Contract unless and

until Consultant has attained and completed that stage of work where the same would be due and payable. If Continuing Service Projects are resumed by School Board within 365 days after it was abandoned or suspended, the fees and compensation payable by School Board to Consultant for the work of Consultant hereunder subsequent to such resumption shall be the amounts provided in Exhibit B- Unit Labor Rates, not previously paid by School Board to Consultant. If Continuing Services Projects are resumed by School Board subsequent to 365 days after its abandonment or suspension, the unpaid balance of the fees and compensation payable by School Board to Consultant pursuant to the provisions of Exhibit B- Unit Labor Rates shall be adjusted upward or downward in direct ratio to any increase or decrease in the cost of living in the United States of America, between the date of such abandonment or suspension of Continuing Service Projects and the date of such resumption thereof, as reflected by the Consumer Price Index for all items prepared and kept by the U.S. Department of Labor.

- (b) In the event of any such suspension or termination without cause, School Board shall pay to Consultant only that portion of the fee and compensation hereunder for the Basic Services of Consultant which has become due and payable to Consultant under the provisions of this Contract, and the remainder of Consultant's fees under this Contract shall be cancelled. Unless School Board authorizes Consultant to the contrary, Consultant shall not perform any services and shall not be entitled to receive payment from School Board on account of any such services performed during the period of suspension or after termination. Upon receipt of notice from School Board that the suspension has been canceled, Consultant shall perform its remaining services in accordance with the terms of this Contract and Consultant shall be entitled to time extension equal to the period of suspension.

13. **Assignability.** This Contract is for the personal services of Consultant and may not be assigned by Consultant in any fashion, whether by operation of law, or by conveyance of any type, including without limitation, transfer of stock in Consultant, without the prior written consent of School Board, which consent School Board may withhold in its sole discretion.

14. **Errors and/or Omissions.** Consultant shall be obligated and responsible to School Board for, and Consultant shall promptly and forthwith pay to School Board upon the demand of School Board, reasonable damages and additional costs and/or expenses in connection with construction of or delay in construction of Continuing Service Projects or otherwise incurred, sustained, and/or paid by School Board on account of or growing out of (1) any and all errors and/or omissions made by Consultant in the preparation of any plans, specifications, drawings and/or other documents pursuant to this Contract and the project's Scope of Services for Consultant, and (2) any and all negligent acts or omissions on the part of Consultant in preparing any plans, specifications, drawings, or other documents or in the performance of any other services under this Contract and the project's Scope of Services for Consultant. It is the intent of the parties hereto that Consultant be held to and accountable for a degree of professionalism that is customary in the industry and commercially reasonable and for accuracy in the performance of the services of Consultant under this Agreement. School Board will hold Consultant harmless for any loss or claim related to an error or omission caused solely by the negligence of the School Board.

15. **Subconsultants/Separate Consultants.**

- A. The Consultant shall set local business participation goals and submit reports to the School Board to ensure accountability. Local business participation goals will be

established for each Task Assignment and will be agreed upon by both parties. The local business participation report to be provided by Consultant shall be in an excel spreadsheet format and shall include but not be limited to the following fields as approved and provided by the School Board: Company Name, Street Address, City, State, Zip, Trade Category, Dollar Amount Spent, and Local Business Category. A local business participation report will be due at the completion of each Task Assignment. The local business participation report shall include businesses that meet one of the following local business categories as outlined in the RFQ:

1. To qualify as an “Osceola County Business” a firm must meet the following criterion:
 - (a) Has its headquarters, manufacturing facility, or locally-owned franchise located within the legal boundaries of Osceola County and
 - (b) Maintains a required business license by a jurisdiction located in Osceola County.
 2. To qualify as a “Regional Business” a firm must meet the following criterion:
 - (a) Has its headquarters, manufacturing facility, or locally-owned franchise located within the legal boundaries of Orange County, Seminole County, Brevard County, Lake County, Polk County, or Volusia County and
 - (b) Maintains a required business license by at least one of the jurisdictions listed in Section 2 (a).
 3. To qualify as a “Florida Business” a firm must meet the following criterion:
 - (a) Has its headquarters, manufacturing facility, or locally-owned franchise located within Florida and
 - (b) Maintains a required business license by at least one of the jurisdiction in Florida.
- B. Any proposed sub consultants shall be submitted to School Board for approval prior to Consultant entering into a subconsultant agreement. Such approval by School Board shall not be unreasonably withheld. School Board shall not be liable to Consultant in any manner whatsoever arising out of the School Board’s objection to a proposed subconsultant.
- C. Consultant shall coordinate the services and work product of any subconsultants and remain fully responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications, and other services furnished by Consultant or its subconsultants, and Consultant shall review and approve any designs, drawings, specifications, shop drawings, submittals, or other services produced or furnished by any subconsultants prior to submittal to School Board. Consultant shall correct or revise any of its errors or deficiencies in the designs, drawings, specifications or other services produced pursuant to this Contract and shall provide School Board with such corrected or revised designs, drawings, or specifications incorporating such corrections or revisions at its sole cost and expense.
- D. Any subconsultant agreement shall reflect the terms of this Contract and require the subconsultant, to the extent of the services to be performed by the subconsultant, to assume toward Consultant all the obligations which Consultant by this Contract assumes toward School Board, it being understood that nothing herein shall in any way relieve Consultant from any of its duties under this Contract.

- E. Consultant shall cooperate at all times with School Board, and cooperate and coordinate with, and incorporate the work product of, any separate consultant, in any fashion appropriate or necessary to facilitate the design and construction of Continuing Service Projects within the project's budget and schedule. In the event School Board so elects and upon written mutual consent (which consent shall not be unreasonably withheld), as evidenced by a Task Assignment to this Contract, Consultant shall accept any assignment of any agreement or contract School Board may have with any separate consultant.
16. **Governing Law.** This Contract shall be construed in accordance with, and be governed by, the laws of the State of Florida, and any dispute, difference, claim or counterclaim between School Board and Consultant arising out of or in connection with this Contract which cannot be amicably resolved by the parties shall be submitted to the Circuit Court in and for Osceola County, Florida (or if the Circuit Court does not have jurisdiction over the subject matter, then to the court sitting in Osceola County which has subject matter jurisdiction) for trial and determination by the court sitting without jury. The parties agree and are encouraged to submit such disputes to non-binding mediation by a mediator who is certified in Florida in an effort to resolve issues in an expedient manner. The parties consent to the jurisdiction of such court and to the service of process outside the State of Florida pursuant to the requirements of such court, and they expressly waive the right to a jury trial.
17. **Consultant's Competitive Negotiation Act.**
- (a) If the total fee paid to Consultant exceeds the threshold amount provided in Section 287.017, for CATEGORY FOUR, the following provisions of the Consultant's Competitive Negotiation Act, Section 287.055(5)(a), Florida Statutes, shall apply:
1. Consultant shall execute and furnish to School Board a "Truth-in-Negotiation Certificate" (Exhibit C, Attachment 5) stating the wage rates and other factual unit costs supporting compensation are accurate, complete, and current at the time of executing each Task Assignment.
 2. The original contract amount and any additions thereto shall be adjusted to exclude any significant sums when School Board determines the contract amount was increased due to inaccurate, incomplete, or non-current wage rates and other factual costs.
18. **Entire Agreement.** This Contract represents the entire and integrated agreement between School Board and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended only by written instrument signed by both School Board and Consultant.
19. **Evaluation.** Consultant will be evaluated by School Board during the Contract period, at intervals established by School Board, and at the end of the construction of Continuing Service Projects. The results of each evaluation will be considered as tools for the measurement of Consultant's past performance and may be included in the review process for future solicitations for consultant services. A copy of the evaluation(s) will be provided to Consultant upon request.
20. **Exhibits.** The Exhibits, A-C, are incorporated herein by reference and shall be binding on the Consultant. In the event of any inconsistency between the Exhibits, the provisions of this Contract shall govern and control.

21. **Public Entity Crime Information Statement and Debarment.** “A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.”

By signing this Agreement, Consultant certifies, to the best of its knowledge and belief, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency.
- (b) Have not, within a five-year period preceding the issuance of RFQ # _____ - been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- (c) Are not presently indicted or otherwise criminally charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in the preceding paragraph (b).
- (d) Have not within a five-year period preceding the issuance of RFQ # _____ - had one or more public transactions (federal, state or local) terminated for cause or default.

Consultant agrees to notify School Board within 30 days after the occurrence of any of the events, actions, debarments, proposals, declarations, exclusions, convictions, judgments, indictments, informations, or terminations as described in paragraphs (a) – (d) above, with respect to Contractor or its principals.

22. **Background Check.** The Consultant agrees to comply with all requirements of sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, shall successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes and the School Board. This background screening will be conducted by the School Board in advance of the Consultant or its personnel providing any services under the conditions described in the previous sentence. The Consultant shall bear the cost of acquiring the background screening required by section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to the Consultant and its personnel. The parties agree that the failure of the Consultant to perform any of the duties described in this section shall constitute a material breach of this agreement entitling the School Board to terminate immediately with no further responsibilities or duties to perform under this agreement. The Consultant agrees to indemnify and hold harmless the School Board, its officers and employees from any liability in the form of physical or mental

injury, death or property damage resulting from Consultant's failure to comply with requirements of this section or with sections 1012.32 and 1012.465, Florida Statutes.

23. **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable.
24. **Assignment.** Neither this agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior, written consent of the other party. There shall be no partial assignments of this agreement.
25. **Non-Discrimination.** The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this agreement because of race, color, religion, gender, age, marital status, disability, political or religious beliefs, national or ethnic origin.
26. **Access to Documentation.** Consultant shall, concurrently with performance of its services, prepare substantiating records regarding services rendered, and shall retain in its records copies of all written communications, and any memoranda of verbal communications, related to the Project. The School Board, the Federal grantor agency (if federal grant moneys use in whole or in part), the Comptroller General of the United States (if federal grant moneys used in whole or in part), the Auditor General, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of Consultant which are directly pertinent to work and services to be performed under this agreement for the purpose of audit, examination, excerpting and transcribing. Upon seven calendar days' written notice, from the date first above written to the latest date described in paragraph 27 below, Consultant shall make its records available during normal business hours to the School Board or any of the entities mentioned in the first sentence of this paragraph. Such entities shall be entitled to inspect, examine, review and copy the records within adequate work space at the Consultant's facilities. Without limitation and not in derogation of any other provision of law or provision of this Agreement, failure of Consultant to supply substantiating records shall be reason to exclude the related costs from amounts which might otherwise be payable by School Board to Consultant pursuant to this Agreement.
27. **Retention of Documentation.** Consultant shall retain all such records as described in paragraph 26 above, and records required under any state or federal rules, regulations or laws respecting audit, for a period of four years after the School Board has made final payment and all services have been performed under this agreement.
28. **Compliance with Federal Grant Requirements.** If made applicable by the use of federal grant funds in the Project and any other requirement as set out below, Consultant shall comply with the following enactments, rules, regulations and orders:

Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees).

Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR part 3).

Davis-Bacon Act (40 U.S.C. 3141 et seq.) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation).

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 701 et seq.) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers).

All applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 7606), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

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IN WITNESS THEREOF, the above parties have executed this instrument, the name of each party being affixed and these present duly signed by its undersigned representative, pursuant to authority of its governing body.

OWNER:
School Board of Osceola County, Florida

By: _____
John McKay, Chairman

Date Approved: _____

ATTEST:

By: _____
Michael A. Grego, Ed.D., Superintendent

CONSULTANT:

By: _____

Print Name: _____

Title: _____

Date: _____

ATTEST:

By: _____

Print Name: _____

Title: _____

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

EXHIBIT A- SCOPE OF SERVICES

Consultant shall provide Continuing Geotechnical Engineering, Materials Testing, and Threshold Inspection Services to the School District of Osceola County's Facilities Division for projects less than \$2,000,000 and studies less than \$200,000 in fee.

A general description of the scope of professional services required may include but not be limited to the following:

GENERAL

Anticipated services could include but are not limited to the following:

1. Design services for selected construction projects, which pertain to the Geotechnical portion of the project. (i.e. If soil borings indicate design changes are needed, Consultant will provide recommendations for possible corrections).
2. Review and comment on educational specifications, design submittals, and construction documents prepared by other Consultants.
3. Review, inspect, and report on specific areas of construction as requested.
4. Provide support with school site analysis, educational specification preparation, construction project budgeting, etc. (i.e. If changes are needed to the original design, the Consultant shall provide cost comparisons for the various recommendations they offered on how to correct the situation).
5. The Consultant will be required to investigate, identify, analyze, and make recommendations with costs for specific school facility problems or needs assigned on selected project(s).
6. Consultant will be required to provide technical support by the use of other Consultants when specialized areas of expertise are needed.
7. Provide technical support in architectural matters to the School District.

SITE WORK SERVICES

The Consultant will be responsible for clearing and grubbing observations prior to proofrolling and filling operations, observing proofrolling operations for compliance, and conducting laboratory tests for moisture density relationship and classification.

The Consultant will be required to conduct subgrade and fill soil density tests on each foot of lift of fill. Pipe backfill density test will be performed in accordance with Standard Test Frequencies. (1 test per 300 lf per 12" lift of backfill and 1 test per 12" lift at structures, unless otherwise specified)

The Consultant's asphalt base and wearing surface construction monitoring will consist of temperature tests (one for every 5 trucks), sampling for classification (one for every 500 tons), and core samples (one for every 300 lf) for thickness and density testing. The Consultant will also be required to note any irregularities in the construction techniques utilized. The School District Representative(s) must be notified immediately of any irregularities in the construction techniques utilized.

Site concrete testing will include subgrade soil in-place density tests, one (1) set of 3 cylinders for every 1,000 lf of curb and sidewalk and one for every 50 cubic yards for all other site concrete. (unless otherwise specified)

Retaining walls will have in-place density tests conducted within footing excavations.

Foundation wall, grade beam backfill soil density tests will be conducted for every foot of fill for each 100 LF.

FOUNDATIONS

The Consultant will be required to perform in-place density tests on foundation soil subgrade at a frequency of 1 test for every third column pad and 1 test for every 100 lf of footing unless otherwise specified. The Consultant will be required to inspect reinforcement and footing size per project approved drawings.

CONCRETE

The Consultant's personnel performing concrete testing must have a minimum ACI Level I certification with a minimum of two years experience.

The Consultant will review concrete mix design submittals for compliance within the Contract documents. All concrete placement will be monitored by the Consultant to verify that air temperature at the point of placement in the structure are within acceptable limits outlined in the project specifications, inspect concrete upon arrival to verify that the proper concrete mix number, type of concrete, and concrete strength is being placed at the proper location, record any water added and note if it exceeds that allowed in the mix design. The Consultant must report any irregularities that occur with the concrete at the job site to the School District Representative(s).

The Consultant will record the slump, temperature and air content at the beginning of concrete placement for each batch and for each set of test cylinders made: one (1) set of four (4) test cylinders will be molded at frequencies no less than the following (unless otherwise specified):

Foundation walls - one (1) set for each 150 cubic yards or fraction thereof.

Grade Beams/Pile Caps - one (1) set for each 100 cubic yards or fraction thereof.

Floors - one (1) set for each 5,000 square feet or floor area.

Columns - one (1) set for each 100 cubic yards or fraction thereof with a minimum of two (2) sets per floor.

Cylinders will be tested for compressive strength; 1 at 7 days, 2 at 28 days and 1 hold cylinder. In addition, one (1) additional cylinder per set will be molded for formed slab and pan joist floors to evaluate the concrete strength at the time of form stripping. The Consultant will be required to inspect proper welding of precast panel connection to structure for size, type, and quality.

MASONRY

Prism Tests-

Prism tests in accordance with ASTM E-447 will be conducted for each 5,000 square foot of wall. The compressive strength prism will be assembled by the Consultant with the actual materials planned in the work.

Mortar Tests-

Mortar tests (ASTM C-780) will be run for each 5,000 square foot of load bearing masonry but not less than one (1) strength test for each day's operations for each class of wall. (unless otherwise specified)

Grout Prisms-

Grout prisms will be molded for each 50 cubic yards of grout but not less than one (1) set for each day's operation and tested for compressive strength, (1 at 7 days and 2 at 28 days). (unless otherwise specified)

STEEL

Consultant' personnel performing testing and inspection for structural steel shall be an AWS Certified Weld Inspector (CWI) for visual inspection and have the appropriate certifications for non-destructive testing.

The Consultant's specialized steel inspector will be required to perform shop and field inspections in accordance with the project specifications, as required.

Shop inspections will be performed at designated fabrication shops for designated periods of time determined in consultation with the Architect, Engineer, and the School District's Representative.

The Consultant will perform field inspection testing in accordance with the following:

1. Obtain the planned erection procedure, and review with the Erectors supervisory personnel.
2. Verify field welding procedures and obtain welder certificates.
3. Check steel as received in the field for possible shipping damage, workmanship, and piece marking.
4. Check joint preparation and fit up, backing strips, and run-out plates for welded moment connections and column splices.
5. Check preheating to assure proper temperature, uniformity, and thoroughness through the full material thickness.
6. Review welding sequence.
7. Visually inspect all field welding for size, length, and quality.
8. Perform bolt torque tests on at least 10% of the high strength bolted connections but not less than two (2) bolts selected at random in the connection and visual; inspect all bearing type bolts to verify that the bolts are snug tight.
9. Perform visual inspections on deck welds and screw placement in accordance with the project's documents.
10. Verify proper bearing at joist supports.

ROOFING INSTALLATION INSPECTION

During the insulating and membrane construction, the Consultant will be required to have a full-time Level III roofing inspector on-site to verify construction in accordance with the project documents.

ADDITIONAL AREAS OF TESTING

The Consultant will be required to mold cubes in accordance with ASTM C-109 on the non-shrink grout for base plates and bearing plates. One (1) set of four (4) cubes will be made for every ten (10) base plates and bearing plates but not less than one (1) set for each days operation. In addition, one (1) set will be made for each days operation of grouting wall panels.

The Consultant will provide thickness measurements, in accordance with UL design specifications, on the sprayed-on fireproofing and sample the material at each floor, for each days operation, and verify oven dry density.

SPECIAL INSPECTION (THRESHOLD INSPECTION) SERVICES

All threshold inspection services will be provided in accordance with Florida Statute 553.

Threshold inspection services will be in strict accordance with the project's threshold inspection plan.

[END OF EXHIBIT A- SCOPE OF SERVICES]

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

EXHIBIT B- UNIT LABOR RATES

Consultant shall list a complete fee schedule to be referred to when proposing services for each project assigned by the School District of Osceola County. The Fee Schedule shall include but not be limited to services required to support the Scope of Services, as so stated in Exhibit A.

Fees, which shall be inclusive of all overhead of Consultant, for basic services and additional services (only when approved in writing by the District Representative), be reimbursed at the following hourly rates:

<u>Title</u>	<u>Hourly Rate</u>	<u>Overtime & Weekends</u>
Title	\$0	\$0

The hourly rate(s) for other professional services, required by the use of subconsultants, will be negotiated at the time a proposal for such service is required and submitted for approval.

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

EXHIBIT C- TASK ASSIGNMENT

I. PURPOSE

This is a Task Assignment to the Continuing Service Geotechnical Engineering, Materials Testing, and Threshold Inspection Services Contract dated _____, 20__ between the School Board of Osceola County, Florida and _____ (CONSULTANT) and made a part thereof. The purpose of this Task Assignment is to specify the required services of the CONSULTANT to provide Geotechnical Engineering, Materials Testing, and Threshold Inspection Services when and as authorized by the School Board's representative, when deemed necessary.

II. METHOD OF COMPENSATION

Payment shall be in accordance with the Continuing Service Contract No. _____ for Geotechnical Engineering, Materials Testing, and Threshold Inspection Services. Compensation for all services, material, supplies, training and any other items or requirements necessary to complete the work as described herein, for a total not-to-exceed _____ DOLLARS (\$0.00) payable at the rates attached hereto. At no time shall work fees exceed said amount of compensation herein without a written and executed Task Assignment.

III. WARRANTY

The Consultant warrants that the plans, specifications, and studies produced as a result of this Task Assignment are complete, correct, and suitable for the purpose intended.

IV. PROCESS

The following Task Assignment Process shall be followed when Geotechnical Engineering, Materials Testing, and Threshold Inspection Services, to include other professional services as subconsultants to the Consultant are required. The Geotechnical Engineering, Materials Testing, and Threshold Inspection Services Consultant shall provide a complete and detailed proposal to include material and labor, and shall submit its proposal in the following format to School Board for review, revision, and approval.

The Geotechnical Engineering, Materials Testing, and Threshold Inspection Services Consultant, at minimum, shall be required to provide the following detail in their proposal:

- Attachment 1- Scope of Work
- Attachment 2- Project Schedule
- Attachment 3- Consultant's Project Team Members
- Attachment 4- Total Cost for Services
- Attachment 5- Truth In Negotiation Certificate (*as required per Florida Statutes*)

All Attachments to this Exhibit C are required for a complete Task Assignment to this Continuing Service Contract for Geotechnical Engineering, Materials Testing, and Threshold Inspection Services.

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

EXHIBIT C- TASK ASSIGNMENT

ATTACHMENT 1- SCOPE OF WORK

All terms used herein shall have the same meaning as defined in the Agreement unless otherwise noted herein. In consideration of the mutual covenants and agreements set forth in Attachments 1 through 5, School Board and Consultant agree, by signature, to the details negotiated in this Task Assignment.

(Consultant shall provide a complete and detailed written scope of work for the project.)

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

EXHIBIT C- TASK ASSIGNMENT

ATTACHMENT 2- PROJECT SCHEDULE

This Task Assignment shall commence upon Notice to Proceed and continue until the scope of work is completed and accepted by the District. Said project shall maintain schedule as provided. If schedule is altered due to unforeseen delays the District's Project Manager shall be notified at once. Failure to meet the scheduled completion date may be grounds for Termination for Default.

School Board's Project Manager and Consultant shall negotiate a proposed schedule for the successful and timely completion of the project. Project schedule shall include the proposed start date, substantial completion date, and final completion date.

The date of Substantial Completion for the Work established by this Task Assignment shall be on or before **XX/XX/XXXX**. Accordingly, the contract period for the Work is established as **XX** calendar days from the Notice to Proceed document (based on **XX/XX/XXXX**). The date of Certificate of Final Inspection for the work established by this Task Assignment shall be on or before **XX/XX/XXXX**. Accordingly, the contract period for the work is established as **XX** calendar days from Substantial Completion to Certificate of Final Inspection.

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

EXHIBIT C- TASK ASSIGNMENT

ATTACHMENT 3- CONSULTANT'S PROJECT TEAM MEMBERS

Consultant shall provide the **name**, **title**, and **responsibility** for each of the Consultant's employees proposed to complete the Scope of Work identified in Attachment 1 of this Task Assignment. Consultant shall also provide the contact information for the Consultant's Project Engineer assigned to this project.

(Consultant to attach list of project team members for this project)

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

EXHIBIT C- TASK ASSIGNMENT

ATTACHMENT 4- TOTAL COST FOR SERVICES

Consultant shall provide a proposal with a total not-to-exceed cost for services, to include a detailed breakdown of material and labor required to complete the Scope of Work detailed in Exhibit C, Attachment 1. All labor and material costs for each project shall be complete and detailed, and shall, without limitation, include and identify the number of hours of work by category of workers/professionals performing the service, while adhering to the Unit Labor Rates in Exhibit B to this Continuing Service Contract.

(Consultant to attach proposal)

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA

EXHIBIT C- TASK ASSIGNMENT

ATTACHMENT 5- TRUTH IN NEGOTIATION CERTIFICATE

The wage rates and other factual unit costs supporting the compensation under the Agreement between the School Board of Osceola County, Florida and _____, dated _____, 20__, are accurate, complete and current as of the time of entering into the contract. This Certificate is executed in Compliance with Section 287.055 (5) (a) of the Florida Statutes.

DATED this _____ day of _____, 20__.

By: _____ (affiant's signature)

STATE OF FLORIDA
COUNTY OF OSCEOLA

BEFORE ME, the undersigned authority, personally appeared _____ [*name of affiant and title*] of _____ [*name of Consultant*] who, after first being duly sworn, deposes and says that the foregoing Truth In Negotiation Certificate is true and correct to the best of his/her knowledge, information and belief.

SWORN TO AND SUBSCRIBED before me on this _____ day of _____, 20__

By: _____ [*name of affiant*].

He/she is personally known to me _____; or has produced _____ as identification .

NOTARY'S SIGNATURE AND SEAL

Type or Print Name

COMMISSION SEAL/NUMBER:

Signature

IN WITNESS THEREOF, the above parties have executed this instrument, the name of each party being affixed and these present duly signed by its undersigned representative, pursuant to authority of its governing body

(Insert appropriate signature block based on cost of Work to be completed.)

OWNER:
The School Board of Osceola County, Florida

By: _____
John McKay, Chairman

Date Approved: _____

ATTEST:

By: _____
Michael A. Grego, Ed.D., Superintendent

CONSULTANT:

By: _____

Print Name: _____

Title: _____

Date: _____

ATTEST:

By: _____

Print Name: _____

Title: _____