

DRAFT CONTRACT FOR RFQ # SDOC 09-Q-073 KR-FPC
AGREEMENT FOR PROFESSIONAL SERVICES
GEOTECHNICAL ENGINEERING, MATERIALS TESTING AND
THRESHOLD INSPECTION SERVICES

THIS AGREEMENT FOR GEOTECHNICAL ENGINEERING, MATERIALS TESTING & THRESHOLD INSPECTION SERVICES (the "Agreement") is dated as of this ___ day of _____, 200__ by and between the School Board of Osceola County, Florida, a body corporate and public (the "Owner"), whose address is 817 Bill Beck Boulevard, Kissimmee, Florida 34744, and _____ (the "Consultant"), a Florida corporation, whose address is _____.

WHEREAS, Owner desires to employ the Consultant to perform the services described in this Agreement in connection with the _____ (the "Project") and Consultant desires to be employed by the Owner; and

WHEREAS, Owner and Consultant agree that Consultant will furnish, perform, and provide Geotechnical Engineering, Materials Testing and Threshold Inspection services required for the Project on the terms contained in this Agreement and the parties desire to reduce to writing their Agreement.

NOW, THEREFORE, Owner and Consultant, for and in consideration of the provisions, mutual promises, covenants, and conditions herein after 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 Agreement.

2. **Contract Documents**. The Contract Documents consist of this Agreement, drawings, specifications, and Addenda issued prior to execution of this Agreement, and the following exhibits:

Exhibit A - Scope of Services

Exhibit B - Project Geotechnical Engineering, Materials Testing and Threshold Inspection Budget

Exhibit C - Project Schedule

Exhibit D - Schedule of Progress Payments and Hourly Rates

Exhibit E – Consultant Reimbursable Expense Guidelines

Exhibit F - Key Employees

Exhibit G - Truth-in-Negotiation Certificate

Exhibits A-G are incorporated into this Agreement by reference and shall be binding on the Consultant. In the event of any inconsistency between this Agreement and the General Terms and Conditions of any RFQ, RFP or ITB related to the Project to which Consultant responded, Conditions of the Contract for Construction or Exhibits, the provisions of the Agreement shall govern and control.

3. **Scope of Services**. The Consultant agrees to furnish and perform professional services for the Project under the terms of the Contract Documents.

- A. Scope of Services. The Consultant agrees to furnish and perform professional services for the Project in accordance with the terms and conditions set forth herein. Consultant agrees to furnish and perform Basic Services and construction phase services as may be required in the specific scope of work and enumerated and described in Exhibit A, General Scope of Services, in connection with the project. The nature and scope of services (hereinafter referred to as “Basic Services”) to be performed by the Consultant under this Contract, to the satisfaction of the School Board, shall be identified in Exhibit A. The Consultant further agrees to furnish and perform Geotechnical Engineering, Materials Testing and Threshold Inspection services not included as Basic Services (hereinafter referred to as “Additional Services”), when and if such Additional Services are requested and authorized by the School Board, in writing. The Schedule of Hourly Rates for Basic and Additional Services is found in Exhibit D. No Additional Services shall be furnished by the Consultant unless specifically requested and authorized by the School board.
- B. Additional Services. The Consultant agrees to furnish and perform additional services in connection with the Project. The Consultant will perform Additional Services only if those services are requested by the Owner in writing.
4. Project Schedule. The Consultant shall begin the Basic Services after both parties have executed this Agreement and the Consultant has received a written notice to proceed from the Owner. The Consultant shall complete the Basic Services in accordance with the Project Schedule attached as Exhibit C.
- A. The parties agree that time is of the essence to this Agreement.
- B. The schedule for Additional Services, if any, shall be established by the Owner through written notification to the Consultant that Additional Services are requested.
- C. Acceleration. The Consultant shall accelerate the performance of Basic Services and Additional Services in the manner directed by the Owner. The Owner has the sole discretion to determine that acceleration is necessary to maintain the Project Schedule. If acceleration is required as a result of delays caused solely by the Consultant, the acceleration shall be at no cost to the Owner. If the acceleration is required as a result of delay partially caused by the Consultant, the portion of the delay not caused by the Consultant shall be treated as an Additional Service and the portion of the delay caused by the Consultant shall be treated as a Basic Service at no additional cost to the Owner.
5. Changes by the Owner. If the Owner changes the Project Construction Budget, the Project Schedule, or any substantial aspect of the Scope of the Project which substantially changes the Project Construction Budget or Project Schedule, the fees and schedule contained in this Agreement shall be renegotiated in good faith.
6. Term. Unless this Agreement is terminated in accordance with Paragraph 10, it shall remain in effect from the date of this Agreement:

- A. If construction is commenced, for a period which may reasonably be required for the design, award of contracts, and construction of the Project, including extra work and any required extension of the Project Schedule; or
- B. If the construction is not commenced, for a period of twelve (12) months after the completion of the Basic Services called for in the last phase of the work authorized by the Owner, unless otherwise agreed to in writing by the parties.

7. **Fees and Payment.**

- A. **Contract Sum.** Owner agrees to pay Consultant a fixed fee of **TBD Dollars (\$ 0.00)** (the “Contract Sum”) for Basic Services. Fees for the specific phases of work shall be made in accordance with Exhibit D, Schedule of Progress Payments and Hourly Rates.
- B. **Additional Services.** The fees for Additional Services shall be established in accordance with the hourly rates described in Exhibit D.
- C. **Progress Payments.** Progress Payments shall be made no more frequently than on a monthly basis, in accordance with Exhibit D, and the Local Government Prompt Payment Act (Fla. Stat. secs. 218.70 – 218.80).
- D. **Reimbursable Expenses.** The Owner shall pay the Consultant for certain reimbursable expenses (the “Reimbursable Expenses”) as set forth on Exhibit E. Consultant hereby waives all rights to payment by the Owner for otherwise Reimbursable Expenses when (a) the expense was incurred more than ninety (90) days before the date on which the Owner receives the first valid invoice from Consultant requesting payment for that expense; (b) the first invoice for that expense is not accompanied by detailed, credible, and legible documentation indicating the project-related nature of the expense; or (c) that evidence is produced in a form that is inconsistent with the form of the invoice.
- E. Final payment by Owner shall not be construed as acceptance of defective work or services.

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 coverages:
 - 1. Professional liability insurance (including coverage for the Schedule of Fees and Services to be performed under this Contract), 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.

2. Commercial General Liability - Consultant shall, during the Term of this Agreement, provide the School Board with evidence, including a Thirty (30) day written notice of cancellation, termination or non-renewal, of insurance prior to commencement of this Agreement. The coverage shall include broad form Commercial General Liability including premises & operations; products & completed operations; personal/advertising injury; fire damage (minimum \$100,000) and independent contractors; for limits of not less than \$1,000,000 per occurrence/\$2,000,000 aggregate per job, per policy year, relative to this project and will include the School Board as an Additional Insured. Further, the Consultant agrees to maintain like coverage for a minimum of Five (5) years following the completion of the project.
 3. Business Automobile - Consultant shall, during the Term of this Agreement, provide the School Board with evidence, including a Thirty (30) day written notice of cancellation, termination or non-renewal, of insurance prior to the commencement of this Agreement. The coverage shall include the Business Automobile Liability form with coverage for symbol I (any auto) and with limits of not less than \$1,000,000 combined single limit or \$1,000,000 per person/\$1,000,000 per accident bodily injury and \$1,000,000 per accident property damage. Also, the policy will include the School Board as an Additional Insured.
 4. Workers' Compensation/Employers Liability - Consultant shall, during the Term of this Agreement, provide the School Board with evidence, including a Thirty (30) day written notice of cancellation, termination or non-renewal, of insurance prior to commencement of this Agreement. The coverage shall include Statutory Workers' Compensation Benefits and Employers Liability for limits of not less than \$500,000.
- 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 for professional liability and workers compensation insurance and 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. **Indemnity and Hold Harmless.** The Consultant shall defend (if required by Owner), indemnify and hold Owner, Owner's construction manager or other agents, professionals, or consultants retained for this Project, and the officers, directors, agents, employees, and assigns of 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 at administrative, trial and appellate level) arising directly or indirectly from or out of any negligent act or omission of Consultant, its subconsultants, 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 Agreement; or, any other failure of Consultant to comply with the obligations on its part to be performed hereunder. This hold harmless and indemnification is made notwithstanding the right of the Owner to reuse the plans and its ownership of, and rights to the Original Work Product. The provisions of this paragraph shall survive the expiration or termination, if sooner, of this Agreement. The Contract Sum includes \$100.00 to be paid by the Owner to the Contractor as specific consideration for the provisions contained in this Agreement and in the Contract Documents which provide for indemnity among the parties, as well as their related or affiliated companies, officers, directors, agents and employees. This amount shall be deemed to have been paid out of the first installment payable under this Agreement.

10. **Termination, Suspension, or Abandonment.**

- A. Termination. Either party may terminate this Agreement for failure of the other party to substantially perform in accordance with the requirements of the Agreement through no fault of the party initiating the termination. Further, the Owner has the absolute right to suspend or terminate this Agreement without cause for convenience at any time upon thirty (30) days prior written notice to the Consultant.
- B. Abandonment or Suspension. If the Owner suspends or abandons the Project, the Owner shall pay all fees and Reimbursable Expenses which have become due and payable to the Consultant pursuant to Article VIII of the General Terms and Conditions and Exhibit D, Schedule of Progress Payments and Hourly Rates. The Consultant shall not be entitled to lost profits for uncompleted work. Payment shall be made for that portion of the work that the Consultant completed prior to the abandonment or suspension and the Owner shall have no further obligation to the Consultant for the payment for any other fees, unless the Project is resumed by the Owner.
- C. Resumption. If the Owner chooses to resume the Project, the Consultant shall complete its services under this Agreement and it shall be entitled to payment of any remaining unpaid fees in accordance with the General Terms and Conditions. When it receives a notice from the Owner that the suspension has been canceled, the Consultant shall perform all services remaining under this Agreement and it shall be entitled to an extension of time equal to the period of the suspension. If the Project is resumed within 365 days of the date it was abandoned or suspended, the fees payable to the Consultant shall be equal to the amounts due under this Agreement which had not been paid by the Owner to the Consultant. If the Project is resumed more than 365 days after the date of its abandonment or suspension, then the amounts due to the Consultant shall be equal to the amounts due under this Agreement which had not been paid by the Owner to the Consultant and shall be adjusted upward or downward in a direct ratio to any increase or decrease in the cost of living in the United States of America (as reflected by the Consumer Price Index kept by the U.S. Department of Labor) between the date of the abandonment or suspension of the Project and the date of the resumption of the Project.
- D. Payment. If the Project is suspended or terminated without cause, the Owner shall pay to the Consultant only the portion of the Contract Sum which has become due and payable. The remainder of the Contract Sum shall be canceled. Unless the Owner authorizes the Consultant in writing, the Consultant shall not perform any further services and shall not be entitled to receive payment from the Owner during a period of suspension.
11. No Assignment. This Agreement is for the personal services of the Consultant and it may not be assigned by the Consultant in any manner, whether by operation of law, or by any conveyance, including without limitation, transfer of stock in the Consultant, without the prior written consent of the Owner. The Owner may withhold its written consent in its sole discretion.
12. Governing Law and Venue. This Agreement shall be governed by and construed under the

laws of the state of Florida. Osceola County, Florida shall be the proper place of venue for all suits to enforce this Agreement. Any legal proceedings arising out of or in connection with this Agreement shall be brought in the circuit courts of Osceola County, Florida. The parties consent to the jurisdiction of the court and to the service of process outside the state of Florida pursuant to the requirements of the court in any manner submitted to it.

13. **Waiver of Jury Trial.** The parties expressly waive the right to a jury trial.
14. **Dispute Resolution.** Prior to initiating any litigation related to this Agreement, the parties agree to submit the dispute to nonbinding mediation by a mediator who is certified in Florida in an effort to resolve disputes in an expedient manner. Each party shall bear their own attorneys' fees and the costs incurred by such mediation shall be split between the parties.
15. **Subconsultants, Separate Consultants, or Subcontractors.** If the Consultant desires to employ subconsultants, separate consultants, or subcontractors in connection with the performance of its services under this Agreement, it agrees to comply with the following:
 - a. **Owner Approval.** The Consultant shall submit any subconsultants, separate consultants, or subcontractors to the Owner for prior written approval. The Owner has the sole discretion to withhold its approval. The Owner shall not be liable to the Consultant in any manner whatsoever arising out of the Owner's objection to a proposed subconsultant, separate consultant, or subcontractor.
 - b. **Consultant Responsibilities.** The Consultant shall coordinate the work product of any subconsultant, separate consultant, or subcontractor and shall remain fully responsible for the professional quality, technical accuracy, and the coordination of all services furnished by the Consultant or its subconsultants, separate consultants, or subcontractors. The Consultant shall review or approve items produced or furnished by any subconsultant, separate consultant, or subcontractor prior to submittal to the Owner.
 - c. **Subconsultant, Separate Consultant, or Subcontractor Responsibilities.** Any agreements between the Consultant and a subconsultant, separate consultant, or subcontractor for work on the Project shall reflect the terms of this Agreement. To the extent the services are to be performed by the subconsultant, separate consultant, or subcontractor, that third party shall assume the obligations of the Consultant towards the Owner. The Consultant acknowledges that this does not relieve the Consultant from any of its duties under this Agreement.
16. **Owner Consultants.** The Consultant shall cooperate at all times with the Owner and shall cooperate and coordinate with any separate consultant or agent hired by the Owner. The Consultant shall incorporate the work product of any Owner consultant in a manner which is appropriate to facilitate the construction of the Project within the Project Construction Budget and Project Schedule.
17. **Key Employees.** The Owner has relied upon and hired the Consultant because of the involvement of certain individuals employed by the Consultant who are identified on Exhibit F

(the “Key Employees”). The Consultant agrees that the Key Employees shall be assigned to the Project. The Consultant shall not remove any Key Employee from the Project without the prior written consent of the Owner, for any reason other than termination of the Key Employee’s employment by the Consultant.

18. **Consultants’ Competitive Negotiation Act.** If the total fee paid to the Consultant exceeds the threshold amount provided in Section 287.017, for CATEGORY FOUR, the following provisions of the Consultants’ Competitive Negotiation Act, section 287.055(5)(a), Florida Statutes apply:
 - A. The Consultant shall execute and furnish to the Owner a “Truth-in-Negotiation Certificate,” stating the wage rates and other factual unit costs supporting compensation are accurate, complete, and current at the time of executing this Agreement.
 - B. The “Truth-in-Negotiation Certificate” form is attached to this Agreement as Exhibit G.
 - C. The Contract Sum and any additions thereto shall be adjusted to exclude any significant sums when the Owner determines the Contract Sum was increased due to inaccurate, incomplete, or non-current wage rates and other factual costs.
19. **Gender.** Unless the context clearly indicates to the contrary, words singular or plural in number shall be deemed to include the other, and pronouns having a neuter, masculine, or feminine gender shall be deemed to include the others.
20. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the matters covered by this Agreement. All prior negotiations, representations, and agreements not incorporated in this Agreement are canceled. This Agreement can be modified or amended only by a written document duly executed by the parties or their duly appointed representatives.
21. **Right to Enter this Agreement.** Each party warrants and represents, with respect to itself, that neither the execution of this Agreement nor the performance of its obligations under this Agreement, shall violate any legal requirement, result in or constitute a breach or default under any indenture, contract, or other commitment or restriction to which it is a party or by which it is bound. Each party also warrants and represents, with respect to itself, that the execution of this Agreement and the performance of its obligations under this Agreement shall not require any consent, vote, or approval which has not been obtained, or at the appropriate time shall not have been given or obtained. Each party agrees that it has or will continue to have throughout the term of this Agreement the full right and authority to enter into this Agreement and to perform its obligations under this Agreement. Upon written request, each party agrees to supply the other parties with evidence of its full right and authority.
22. **Binding Effect.** Each and all of the covenants, terms, provisions, and agreements contained in this Agreement shall be binding upon and inure to the benefit of the parties and their respective assigns, successors, subsidiaries, affiliates, holding companies and legal

representatives, as allowed in this Agreement.

23. **Notices.** All notices shall be in writing, and may be served by (a) depositing the same in the United States mail addressed to the party to be notified, postpaid, and registered or certified with return receipt requested, (b) by delivering the same in person to such party, (i) personal delivery, or (ii) overnight courier, or (c) by facsimile transmission provided that a copy is sent on the same day, by 5 p.m., by either of the methods described in (a) or (b). Notice deposited in the mail shall be deemed to have been given on the third day next following the date postmarked on the envelope containing such notice, or when actually received, whichever is earlier.

Notice given in any manner shall be effective only if and when received by the party to be notified. All notices to be given to the parties shall be sent to or delivered at the addresses or facsimile numbers set forth below:

If to School Board: Attention: Eric Shawn Houston, Assistant Superintendent
Facilities and Maintenance
School District of Osceola County, Florida
809 Bill Beck Boulevard
Kissimmee, FL 34744
Telecopy: (407) 343-8603

If to Consultant: Attention:
Telecopy: (000)

By giving the other party at least 15 days written notice, each party shall have the right to change its address and specify as its new address any other address in the United States of America.

24. **Waiver.** No consent or waiver, express or implied, by either party to this Agreement to or of any breach or default by another in the performance of any obligations shall be deemed or construed to be consent or waiver to or of any other breach or default by that party. Except as otherwise provided in this Agreement, failure on the part of any party to complain of any act or failure to act by another party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver of the rights of that party.
25. **Captions.** The captions used for the Sections in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or the intent of this Agreement or any Article or Section hereof.
26. **Severability.** In the event any of the provisions of this Agreement are determined by a court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision shall be excised from this Agreement, and the remainder of this Agreement shall continue in full force and effect. Notwithstanding the foregoing, if the result of the deletion of such provision shall materially and adversely affect the rights of a party, such party may elect, at its option, to terminate this Agreement in its entirety.
27. **Cumulative Remedies.** All rights, powers, remedies, benefits, and privileges available under

any provision of this Agreement to any party is in addition to and cumulative of any and all rights, powers, remedies, benefits, and privileges available to such party under all other provisions of this Agreement, at law or in equity.

28. **Approvals**. Whenever any review or approval is required by any party, such party agrees that such review or approval shall be promptly and expeditiously prosecuted to conclusion.
29. **Further Assurances**. The parties agree to execute any and all further instruments and documents, and take all such action as may be reasonably required by any party to effectuate the terms and provisions of this Agreement and the transactions contemplated in this Agreement.
30. **No Partnership or Joint Venture**. It is understood and agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture between the School Board and Consultant or any other party, or cause either party to be responsible in any way for the debts and obligations of the other party.
31. **Third Party Beneficiaries**. This Agreement has been made and entered into for the sole protection and benefit of the School Board and Consultant, and their respective successors, and no other person or entity shall have any right or action under this Agreement.
32. **No Construction Against Drafter**. Each of the parties has been represented by legal counsel who have had ample opportunity to, and have, participated in the drafting of this Agreement. Therefore, this Agreement shall not be construed more favorably or unfavorably against any party.
33. “The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the Owner shall have the right to terminate this Agreement without liability and, at his discretion, to deduct from the Basic Services Compensation, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.”
34. **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 date hereof 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 date hereof 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 39(a) – (b) above, with respect to Consultant or its principals.

35. **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. 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.
36. **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.

37. **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.
38. **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.
39. **Access to and Retention of Documentation.** The School Board, the Federal grantor agency (if federal grant moneys are used in whole or in part), the Comptroller General of the United States (if federal grant moneys are 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. The parties will retain all such required records, 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.
40. **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 WHEREOF, the parties hereto have hereunto caused these presents to be executed as of the day and year first above written.

SCHOOL BOARD OF OSCEOLA COUNTY, FLORIDA

By: _____
John McKay, Chairman

Date: _____

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

CONSULTANT:

By: _____

Date: _____

Attest: _____

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THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA
EXHIBIT A
SCOPE OF SERVICES

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THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA
EXHIBIT B
PROJECT GEOTECHNICAL ENGINEERING, MATERIALS TESTING & THRESHOLD
INSPECTION BUDGET

Geotechnical Engineering, Materials Testing and Threshold Inspection Firm will take care of work within cost parameters set forth by Owner and CM. Geotechnical, Materials Testing and Threshold Inspection Firm to request any construction cost breakdown necessary to complete its scope of work, from the Owner.

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THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA
EXHIBIT C
PROJECT SCHEDULE

Owner has entered into a GMP Agreement with the Construction Manager for a total Project schedule, including an opening of **TBD**. Geotechnical Engineering, Materials Testing and Threshold Inspection Firm will coordinate with the Owner and CM to take care of the work within the schedule parameters.

Project Schedule: SDOC plans for a XXXX (XX) month construction period and a 60 day period from substantial completion to final completion. **Start Date: XXXX Completion Date: XXXX**

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**THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA EXHIBIT D SCHEDULE OF
PROGRESS PAYMENTS AND HOURLY RATES**

Not to Exceed Fee for Basic Services shall be established and paid in accordance with the Contract and this Exhibit as follows:

Billing and Payment shall be at completion phases of work established by Purchase Order or Work Order, and per the Project Proposal (Attachment 1), on a monthly basis. Geotechnical Engineering, Materials Testing and Threshold Inspection Firm shall invoice on Purchase Orders issued by Owner.

DRAFT

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA
EXHIBIT E
CONSULTANT REIMBURSABLE EXPENSE GUIDELINES

The Fee as described in the Agreement for Professional Services (Section 7, Fees and Payment) is all-inclusive and fixed. Travel and other expenses shall not be paid unless provided for in Attachment 1. No other expenses or costs will be reimbursed, without prior written authorization received from the Owner.

DRAFT

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA
EXHIBIT F
KEY EMPLOYEES

Identify team members responsible for this project and their areas of responsibility.

Member Title Responsibility

DRAFT

THE SCHOOL DISTRICT OF OSCEOLA COUNTY, FLORIDA
EXHIBIT G
TRUTH IN NEGOTIATION CERTIFICATE

The wage rates and other factual unit costs supporting the compensation under the Contract between the School Board of Osceola County, Florida and _____ dated _____ 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 200__.

By:

STATE OF FLORIDA

COUNTY OF

BEFORE ME, the undersigned authority, personally appeared _____ as its _____, 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 this day of _____, 20__, by

(Type/print name of affiant).

Notary Public

(Printed name)

Personally known to me;

Or has produced identification

Type of identification produced: