

**FIRST AMENDMENT TO
AGREEMENT FOR OPEN END SERVICES**

**BETWEEN
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
AND
CONSULTANT
FOR
GEOTECHNICAL ENGINEERING SERVICES**

THIS FIRST AMENDMENT TO AGREEMENT is made and entered into as of this
23rd day of June, 2020, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as "Owner"),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301
and

TERRACON CONSULTANTS, INC.
(hereinafter referred to as "Consultant"),
having its principal place of business at
10841 S. Ridgeview Road
Olathe, KS 66061

WHEREAS, Owner and Consultant entered into a "Open End" Agreement dated August 7, 2018 (hereafter "Agreement"); and

WHEREAS, Owner and Consultant acknowledge and agree that the Agreement is in full force and effect as revised by this First Amendment; and

WHEREAS, the Owner and Consultant desire to incorporate terms for compliance with FEMA requirements for reimbursement, recommended additional clauses required by the Super Circular, 2 C.F.R. 200.318 – 200.326 and other FEMA sources; and

WHEREAS, the Owner and Consultant desire to incorporate additional terms and conditions concerning the effective administration of the Agreement as more specifically contained herein.

NOW THEREFORE, in exchange for the mutual covenants and promises set forth herein and other good and valuable consideration, the parties agree as follows:

1. **Recitals**. The recitals contained herein are true and correct and are incorporated herein by reference.

2. **Amended Provisions.** All terms, conditions, duties and obligations set forth in “PSA Attachment #12” attached hereto are hereby incorporated into the Agreement.
3. **Other Provisions Remain in Force.** Except as expressly provided herein, all other portions of the Agreement remain in full force and effect.
4. **Order of Precedence among Agreement Documents.** In the event of conflict between the provisions of the Agreement and the provisions contained herein, the provisions of the following documents shall take precedence in this order:
 - a) this First Amendment to Agreement; then
 - b) the Agreement.
5. **Authority:** Each person signing this First Amendment on behalf of either party warrants that he or she has full legal power to execute this First Amendment on behalf of the party for whom he or she is signing it to bind and obligate such party with respect to all provisions contained in this First Amendment.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed and their Corporate Seal affixed by and through their proper offices, thereunto duly authorized on this day and year first above written.

FOR OWNER

(SEAL)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By _____

Donna P. Korn, Chair

ATTEST

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:



Office of the General Counsel

[Remainder of page intentionally left blank]



(Corporate Seal)

FOR CONSULTANT

Terracon Consultants, Inc.

By [Signature]
Donald J. Vrana, Executive Vice President, Treasurer

ATTEST:

[Signature]
Michael J. Yost, Secretary

-or-

Witness

Witness

F04000000114
Consultant's Registration Number

STATE OF KANSAS)
)
COUNTY OF JOHNSON)

The foregoing instrument was acknowledged before me, by means of physical presence or online notarization, this 11th day of May, 2020 by Donald J. Vrana of Terracon Consultants, Inc. on behalf of the corporation or agency.

He/she is personally known to me or produced as Identification _____ and did/did not first take an oath.

My commission expires:
02-11-2021

[Signature]
Signature, Notary Public

Barbara Lynn Boerner
Printed Name of Notary



PSA Attachment #12

ADDED FEMA REQUIREMENTS

1. **Added Terms and Conditions.** Terracon Consultants, Inc. (“Consultant”) shall incorporate the following FEMA terms and conditions into all construction and bid documents for projects subject to receipt of any grant, contract, loan, insurance, or guarantee involving federally assisted construction. Consultant shall itself comply with all terms and conditions which apply to the professional design services provided for such projects.

2. **Compliance with Federal Law, Regulations and Executive Orders.** This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of this contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures and directives.

- a. **Davis-Bacon Act**, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- b. The contracts must also include a provision for compliance with the **Copeland “Anti-Kickback” Act** (40 U.S.C. 3145) as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal Entity must report all suspected or reported violations to the Federal awarding agency.
 - i. **Contractor.** The contractor shall comply with 18 U.S.C. 874, 40 U.S.C. 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
 - ii. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate

instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

iii. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

c. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Consultant will comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

- i. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- ii. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by this section.
- iii. Withholding for unpaid wages and liquidated damages. The School Board of Broward County, Florida shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in this section.

- iv. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in Articles 1.e.i through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

- d. **Clean Air Act.** The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 et. Seq.

The contractor agrees to report each violation to the School Board of Broward County and understands and agrees that the School Board of Broward County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

- e. **Federal Water Pollution Control Act.** The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

The contractor agrees to report each violation to the School Board of Broward County and understands and agrees that the School Board of Broward County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

3. **Recovered/Recycled Materials.** In the performance of this contract, the contractor shall make maximum use of products containing recovered/recycled materials that are EPA- designated items unless the product cannot be acquired: competitively within a timeframe providing for compliance with the contract performance; meeting contract performance requirements; or at a reasonable price. If such materials are not available, then materials used for the manufacture or construction of any supplies, materials or equipment covered by this project shall be new unless otherwise specified. Product(s) offered that have not been previously used in any way and are being actively marketed by the manufacturer will be accepted. Minor parts within the product(s) may have remanufactured components. If recovered/recycled materials are not available, the items bid must be new, the latest model, of the best quality and highest-grade workmanship as needed for the particular procurement.

If a proposed recovered/recycled material has been determined to be unsafe for children in the schools, then only new material shall be used.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines website,

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

4. **Equal Employment Opportunity.** Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The following shall be incorporated into the Agreement for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a

part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontractor purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

5. **Contract Work Hours and Safety Standards.** Consultant and contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

6. **Policies, Local, State and Federal Laws.** Consultant and contractor agree to comply with all School Board Policies, local, state and federal laws, including, but not limited to, the federal Clean Air Act and Clean Water Act.

7. **Energy Efficiency.** Consultant and contractor shall comply with the 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.

8. **Rights To Inventions Made Under A Contract Or Agreement.** Any invention developed during the performance of work under a federal award or grant shall provide for a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

9. **Certification.** Contractors applying or bidding for an award of \$100,000 or more must file the required certification: Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

10. **DHS Imagery.** A contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

11. **Access To Records.** The contractor agrees to provide the School Board of Broward County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

- a. The contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed
- b. The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- c. In compliance with the Disaster Recovery Act of 2018, The School Board of Broward County, Florida and the contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

12. **Changes.** The cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of the applicable Federal grant or cooperative agreement, and reasonable for the completion of project scope.

13. **Breach.** A breach of any of the articles above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R.

14. **Debarment and Suspension (Executive Orders 12549 and 12689).** This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. 180.995) or its affiliates (defined at 2 C.F.R. 180.905) are excluded (defined at 2 C.F.R. 180.940) or disqualified (defined at 2 C.F.R. 180.935).

The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by the School Board of Broward County. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the School Board of Broward County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

15. **Byrd Anti-Lobbying Amendment.** Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose

any lobbying with non-Federal funds that takes place in connection with obtaining any Federal Award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

16. **No Obligation by Federal Government.** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

ADDED OWNER REQUIREMENTS

17. **e-Builder.** The Consultant shall use the Owner's Project Management software, e-Builder, as a conduit for all project management tasks, including, but not limited to: communications to, from and between Owner, Consultant and CM; pay applications/invoicing; requests for change orders; material, equipment and systems submittals; requests for information; Architect's Supplemental Instructions; SMWBE Monthly Utilization Reporting; periodic Project observations; Weekly Progress Reports and meeting minutes.

- a. Licenses shall be provided to Consultant to permit access and use of e-Builder for all projects awarded by Owner. Such licenses(s) shall be valid throughout the duration of the project(s).
- b. **Form Module.** The e-Builder Forms Module shall be used as the exclusive method to create Action Items that require a response from another Project Construction Team member. The required use of the Forms Module includes All e-mailed communications.
- c. **Work Flows.** Any and all responses or required responses to an open Action Item or to an initiated Work Flow process shall be input and managed through e-Builder Work Flow processes that will be executed through e-Builder include but are not limited to the procedures identified in the Professional Services Agreement - Continuing Contracts - Architectural.
- d. **Calendar Module.** The identification of Project events and required deliverables shall be input and maintained in the Calendar Module. At a minimum, such events include bi-weekly design meetings (while in design) weekly construction meetings, public meetings for the project (ex. Project Charter Meetings, etc.) and other design and/or construction milestones and deadlines.
- e. **Meetings.** Information to be submitted through e-Builder related to any meeting includes, but is not limited to an agenda, a reminder of the meeting (which must occur a minimum of two (2) days prior to the meeting), meeting minutes (using the approved meeting minutes template) and confirmation of actual meeting attendees.
- f. **Access to e-Builder and Licensing.** Consultant shall designate and identify the employee(s) that shall personally access e-Builder, the projects to which the employees(s) is assigned, and the employee(s)'s duties and responsibilities as it relates to e-Builder.

This information together with a request for licensing shall be sent to:

Atkins, Program Controls Support
telephone number (754) 321-01537, ebuilderLicense@browardschools.com.

Upon receipt, review and acceptance of the request, access information and logins shall be provided to Consultant.

Training shall be coordinated, scheduled and provided to those provided access and licenses by Atkins. Additional training may be provided based on availability.