



Agenda Item Details

Meeting	May 28, 2024 - Regular Meeting
Category	7. Consent Agenda
Subject	7.14 Professional Service Agreement #25-01 Nova Engineering and Environmental, LLC, presented by Vince Windham, Program Director, Purchasing, and recommended by the Superintendent for approval.
Access	Public
Type	Action (Consent)
Preferred Date	May 28, 2024
Absolute Date	May 28, 2024
Fiscal Impact	Yes
Dollar Amount	175,000.00
Budgeted	Yes
Budget Source	General Fund
Recommended Action	Motion to approve Professional Service Agreement #25-01 between Nova Engineering and Environmental, LLC, and The School Board of Okaloosa County, Florida, on behalf of the Facilities Planning Department, effective May 29, 2024 through May 28, 2025.

Public Content

Request approval of Professional Service Agreement #25-01 between Nova Engineering and Environmental, LLC, and The School Board of Okaloosa County, Florida, on behalf of the Facilities Planning Department. The Provider will provide professional services to the Facility and Maintenance Departments in the form of a Florida Licensed Building Official who will be the Authority Having Jurisdiction (AHJ) for the board. The Provider will be paid \$14,583.33 per month, for a total contract amount not to exceed \$175,000.00. This contract is based on Escambia County Professional Services Contract #PD 23-24.0101-1. All funds will be paid from General Fund, and the contract is effective May 29, 2024, through May 28, 2025. A copy of the agreement is attached.

For additional information, please contact Dr. Bill Smith, Program Director, Facilities Planning, at (850) 689-7890.

SA#25-01.pdf (677 KB)

Administrative Content

Our adopted rules of Parliamentary Procedure, Robert's Rules, provide for a consent agenda listing several items for approval of the Board by a single motion. Documentation concerning these items have been

provided to all Board members and the public in advance to assure an extensive and thorough review. Items may be removed from the consent agenda at the request of any board member.

Motion & Voting

Motion to approve Monthly Financial Statement for April 2024

Motion by Tim Bryant, second by Linda Evanchyk.

Final Resolution: Motion Carries

Yes: Tim Bryant, Linda Evanchyk, Marti Gardner, Diane Kelley, Lamar White

OKALOOSA COUNTY SCHOOL DISTRICT
PURCHASING DEPARTMENT
PROFESSIONAL SERVICE AGREEMENT

THIS AGREEMENT, effective this 29th day of May, 2024, by and between NOVA Engineering and Environmental, LLC, a Georgia limited liability company, 5001 Commerce Park Circle, Pensacola, FL 32505 (address), (hereinafter referred to as "Provider and or "NOVA"), and THE SCHOOL BOARD OF OKALOOSA COUNTY, FLORIDA, 202A Highway 85 North, Niceville, Florida, as the governmental agency with jurisdiction over OKALOOSA COUNTY SCHOOL DISTRICT, (hereinafter referred to as "Recipient").

1. Scope of Work. The purpose of this Agreement is to establish the terms and conditions under which the Provider shall deliver or perform the following services indicated for the Recipient: The Provider will provide professional services to the OCSD Facility and Maintenance Department in the form of a Florida Licensed Building Official who will be the Authority Having Jurisdiction (AHJ) for Okaloosa County School Board. The Building Official will adhere to Florida Administrative Rules, Laws in Florida Statutes, the Florida Building Codes, and State Requirements for Educational Facilities (SREF). This contract is based on Escambia County Professional Services Contract # PD 23-24.010-1 as Governed by Section 287.055, Florida Statutes. See attached Addendum #1 for further detailed scope of work, and terms and conditions which are by reference incorporated herein. In the event of any conflict in the terms and conditions of this Agreement and those contained in Addendum #1 the terms and conditions of this Agreement shall prevail. The scope of work shall hereinafter be referred to as the "Project."
2. Term. The Initial Term of this Agreement shall begin on the 29th day of May, 2024, and shall end on the 28th day of May, 2025. This Agreement may be renewed and/or extended by mutual agreement of the parties at the end of the Initial Term and any extended term thereafter.
3. Relationship between the Parties. Provider is contracted by the Recipient only for the purposes and to the extent set forth in this Agreement, and its relation to the Recipient shall, during the period or periods of this Agreement and the delivery of services hereunder, be that of an independent contractor. Provider shall be free to dispose of such portion of its entire time, energy, and skill during regular business hours as it is not obligated to devote hereunder to the Recipient in such a manner as it sees fit and to such persons, firms, or corporations as it chooses. Neither the Provider or its agents, employees or affiliates shall be considered as having an employee status or as being entitled to participate in any plans, arrangements, or distributions by the Recipient pertaining to or in connection with any compensation, insurance plan or other benefits as provided to Recipient's regular employees.
4. Responsibilities of Provider.
 - a. Delivery of Services: The Provider shall deliver the services required under this Agreement on the dates and at the times and places as specified herein: Beginning May 29, 2024 through, May 28, 2025. Services provided, to include dates, times, and places will be mutually agreed upon between the Provider and Recipient.
 - b. Staff and Personnel: The Provider shall make available the following personnel and/or other resources to provide the services required under this Agreement: *Joseph Berko, and any employee of the Company hired to perform the services Are you or the person/s named a citizen of the U.S.? Yes*

- c. Finances: The Provider shall be responsible for the following costs and expenses associated with providing the services under this Agreement: *Provider is responsible for paying its own withholding taxes, all other employment related taxes or costs and all travel and other expenses incurred by Provider in the delivery of services hereunder.* The Recipient will be responsible for providing program support to include office space, Permitting Administrative Support, and In-County Transportation related to this contract.
- d. Supervision, Monitoring, and Evaluation: The Provider shall be responsible for the supervision of all of its personnel and/or agents assigned to provide services under this Agreement. Additionally, the Provider shall be responsible for the constant monitoring of the quality of service delivered to insure the highest standards of service are being provided to the Recipient under this Agreement in order to achieve a maximum benefit to the Recipient, its employees, students, and the families of students that are to be the recipients of these services. The Provider shall work mutually with the Recipient to provide an evaluation of the delivery and impact of the services made available under this Agreement and shall further provide to the Recipient any and all data or other materials maintained or collected by Provider in the course of performing this Agreement.
- e. Confidentiality: The Provider shall only be entitled to receive records and information from the Recipient which can be lawfully made available to Provider, and in such event the Provider shall be held strictly accountable for the protection of such records and information consistent with both state and federal laws protecting the confidentiality of juvenile and student records and other information which may be available through the Recipient which is necessary for Provider to deliver the services required hereunder.
- f. Background screening:
 - (i) In accordance with Florida Statute (S.) 1012.465, all contractors, vendors, individuals and other entities under contract with the School Board, and the employees and subcontractors of any such contracting party, who are permitted on school grounds when students are present; who have direct contact with students; or who have access to or control of school funds must meet Level 2 screening requirements as described in Section 1012.32, Florida Statutes unless otherwise exempted from such requirements by S. 1012.467 or S. 1012.468. A Level 2 screening includes conducting a background check and filing with the Okaloosa County School District a complete set of fingerprints of each individual, employee, or subcontractor taken by an authorized school district agent trained to take fingerprints. The Provider shall bear the costs of all such background screening and fees to maintain the fingerprints provided with respect to Provider and its employees.
 - (ii) Any personnel of the Provider discovered, through fingerprint processing, to have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to any offense outlined in Section 435.04, Florida Statutes (or any similar statute of another jurisdiction), shall not be permitted to come onto school grounds or school-sponsored activities when students are present, or to have access to School District funds.
 - (iii) It is the responsibility of the Provider to assure compliance with this requirement. Provider agrees that in the event the Provider or any employee is later convicted of, or pleads nolo contendere to any

disqualifying offense as outlined in Section 435.04, Florida Statutes the Provider will notify School Board within 48 hours of such.

(iv) The parties agree that the Provider's failure to perform any of the duties described in this section will constitute a material breach of this contract entitling the School Board to terminate immediately with no further responsibility to make payment or perform any other duties under this contract. Provider agrees to indemnify and hold harmless the School Board, its officers and employees from any liability in the form of physical injury, death, or property damage resulting from Provider's failure to comply with the requirements of this section or sections 1012.32, 1012.465, 1012.467, and 1012.468 Florida Statutes.

(v) All contractors, vendors, individuals and other entities under contract with the School Board, and the employees and subcontractors of any such contracting party must possess a badge issued through the Okaloosa County School District Fingerprinting office for clearance onto school property. An orange badge signifies that a vendor has a Level II clearance with **full access** to school property and is valid for 5 years. A burgundy badge signifies that a vendor has **limited access** to school property and is valid for 1 year. Contact the Okaloosa County School District Fingerprinting office at (850) 833-5812 for additional information on screening and clearance procedures.

g. E-Verify Requirements: Effective January 1, 2021 public and private employers, contractors and subcontractors must require registration with, and use of the U. S. Department of Homeland Security E-Verify System, <https://e-verify.uscis.gov/emp>, in order to verify the work authorization status of all newly hired employees. By entering into this Agreement, the Provider becomes obligated to comply with the provisions of §448.095, *Florida Statutes*, "Employment Eligibility," as amended from time to time. This includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Provider attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Provider agrees to maintain a copy of such affidavit for the duration of this Agreement and shall provide a copy to School Board upon request. Failure to comply with this paragraph shall constitute a default and material breach of this Agreement by Provider and will result in the termination of this Agreement as provided in §448.095, *Florida Statutes*, as amended, and Provider may not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Provider will also be liable for any additional costs to School Board incurred as a result of the termination of this Agreement in accordance with this section.

h. Official Representative: The Provider shall be responsible for providing an official representative and contact person to conduct all communications with the Recipient and to be responsible for the ongoing administration of this Agreement. *The Provider hereby designates Joseph Berko, Project Manager, of NOVA as the official representative for the purposes of administering this Agreement with the Recipient.*

i. Florida Retirement System: If the Provider is a retiree in the Florida Retirement System (the "FRS") then Provider, shall be responsible for obtaining any necessary approval in writing from FRS before entering into the Agreement to insure that there will not be an impact in Providers retirement benefit payment. The School Board shall not be liable to the Provider, under any circumstance, for any loss or impact of Provider retirement benefits.

j. Professional Responsibility: Nothing in this Agreement shall be construed to interfere with or otherwise affect the rendering of services by Provider in its own independent and professional

judgment. This Agreement and the delivery of services hereunder, shall be subject to the rules and regulations of Recipient and the laws and regulations of the State of Florida.

- k. Access to Records / Records Retention: The Provider agrees that the Recipient, the Federal grantor agency, the Comptroller General of the United States of America, and the Auditor General of the State of Florida or their duly authorized representatives shall have access to any books, documents, papers, and records of the Provider or subcontractor which are directly pertinent to this specific contract for the purpose of making audit, examination, excerpts, and transcriptions. All Providers and subcontractors must retain all records pertaining to this contract for three years after the Recipient makes final payments and all other pending matters are closed.
- l. Force Majeure Event: Neither Party to this Agreement shall be liable for delays or failures in performance under this Agreement (other than obligations relating to confidentiality and protection of ownership and intellectual property rights) resulting from acts or events beyond the reasonable control of such party (a "Force Majeure Event"), including acts of war, terrorism, acts of God, epidemics, pandemic, earthquake, fire, flood, hurricanes, embargo, riot, sabotage, labor dispute, governmental act, failure of the internet, power failure, or energy, utility or telecommunications interruptions, or the issuance or extension of existing government orders of the United States, the State of Florida, or local county and municipal governing bodies, which prevents performance of the contract for all or any part of the term of the Agreement, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. In the event that a Force Majeure Event lasts for more than 90 days, and the delayed party cannot correct its failure or delay in performance during that period of time, despite using its reasonable commercial efforts to do so, the other party may terminate the affected portions of this Agreement.
- m. Public Agency Contracts: To the extent that Provider meets the definition of "contractor" under Section 119.0701, Florida Statutes, in addition to other contract requirements provided by law, Provider must comply with public record laws, including the following provisions of Section 119.0701, Florida Statutes:
 - a) Keep and maintain public records required by the School Board to perform service.
 - b) Upon request from the School Board's custodian of public records, provide the School Board with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
 - c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
 - d) Upon completion of the contract, transfer, at no cost, to the School Board all public records in possession of the Provider or keep and maintain public records required by the School Board to perform the service. If the Provider transfers all public records to the School Board upon completion of the contract, the Provider shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Provider keeps and maintains public records upon completion of the contract, the Provider

shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the School Board upon request from the School Board's custodian of public records, in a format that is compatible with the information technology systems of the School Board.

- e) **IF THE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE SCHOOL BOARD'S CUSTODIAN OF PUBLIC RECORDS, ERIC MITCHELL, AT (850) 689-7184, OR ERIC.MITCHELL@OKALOOSASCHOOLS.COM, OR OKALOOSA COUNTY SCHOOL DISTRICT, 461 WEST SCHOOL AVENUE, CRESTVIEW, FL 32536.**
- f) The Provider acknowledges that the School Board cannot and will not provide legal advice or business advice to Provider with respect to its obligations pursuant to this section related to public records. The Provider further acknowledges that it will not rely on the School Board or its counsel to provide such business or legal advice, and that he has been advised to seek professional advice with regard to public records matters addressed by this agreement. The Provider acknowledges that its failure to comply with Florida law and this agreement with respect to public records shall constitute a material breach of this agreement.
- n. Excess Funds: Any Party receiving funds paid by School Board under this Agreement must promptly notify School Board of any funds erroneously received upon the discovery of such receipt. Provider must refund excess funds to School Board. Provider must refund excess funds paid by School Board due to Provider billing errors with interest calculated from the date of the erroneous payment or overpayment. The interest rate for judgments under §55.03, Florida Statutes, at the time the School Board made the erroneous payment or overpayment will apply.
- o. Conduct While on School Property: Provider and its employees and agents will behave in an appropriate manner while on the premises of any school facility and will at all times conduct themselves in a manner consistent with School Board policies and within the discretion of the Superintendent or his/her designee. It is a breach of this Agreement for any Provider or agent or employee of Provider to behave in a manner which is inconsistent with good conduct or decorum or to behave in any manner that will disrupt the educational program or constitute any level of threat to the safety, health, and well-being of any student or employee of the School Board. Provider agrees to immediately remove any agent or employee if directed to do so by the Superintendent or his/her designee.
- p. Non-Discrimination: Neither Party will subject any person to discrimination because of age, race, color, disability, pregnancy, gender, marital status, national origin, or religion, in the performance of the Parties' respective duties, responsibilities, and obligations under the Agreement.
- q. No Waiver of Sovereign Immunity: This Agreement does not waive sovereign immunity by any agency or political subdivision to which sovereign immunity may apply, or of any rights or limits of

liability existing under §768.28, Florida Statutes. This term survives the termination of all performance or obligations under this Agreement and is fully binding until any applicable statute of limitations bars any proceeding brought under this Agreement.

- r. Publicity: Provider shall not use School Board's name, logo, or other likeness, or any school or office operated by School Board public schools, in any press release, marketing materials, or another public announcement without School Board's prior written approval.
- s. Child Neglect: Provider and its employees will be subject to the requirements of §39.201, Florida Statutes, that requires the reporting of child abuse or child neglect to the State of Florida, Department of Children and Families via the Florida Abuse Hotline 1-800-962-2873; report online at <https://reportabuse.dcf.state.fl.us/>; or fax a report to 1-800-914-0004.
- t. Gratuities: Provider will not, either directly or indirectly: (1) offer, give, or provide any tangible item of value to anyone as consideration for any School Board employee's decision, opinion, recommendation, vote, another exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone a tangible item of value for the benefit of, or at the direction or request of, any School Board employee.

5. Responsibilities of the Recipient.

- a. Financing: The Recipient shall be responsible for the following costs and/or expenses associated with Provider's delivery of services under this Agreement: *The Provider will be paid \$14,583.33 per month, by the 10th of each month during the Agreement Term, for a total contract amount not to exceed \$175,000.00. All funds are being paid by Facilities Planning/Department. Funding is out of the following budget:*

X General Fund: *Fund 1010 Function 7400 Object 0310 Cost Center 9007 Project*

☐ Special Revenue: *Fund Function Object Cost Center Project*

☐ Internal Fund Purchase: *Account Name -*

- b. Confidentiality: The Recipient shall be responsible for insuring that all records and other information in its possession are properly handled under both state and federal confidentiality laws protecting the rights of juveniles and students.
- c. Monitoring and Evaluation: The Recipient and/or its designee under this Agreement shall participate with Provider to monitor the delivery of services under this Agreement and further to coordinate any service or program evaluation that may be necessary during or at the conclusion of the term of this Agreement.
- d. Program Support: The Recipient and/or designee under this Agreement shall make available to the Provider, its employees and/or agents in the course of their delivery of services under this Agreement the following facilities and/or resources to assist provider in the quality delivery of services: *Office Space, Permitting Administrative Support and In-County Transportation related to this contract.*
- e. Official Representative: The Recipient shall be responsible for providing an official representative and contact person to conduct all communications with Provider and to be responsible for the ongoing administration of this Agreement. The Recipient hereby designates *Dr. Bill Smith, Program Director of Facilities Planning.*

6. Modification. This Agreement may be modified from time to time but only upon written mutual consent of the parties hereto.
7. Disputes. In the event a dispute should arise between the parties as to the delivery of services under this Agreement, the Recipient hereby authorizes its Superintendent of Schools to work with the Provider to resolve any such disputes. In the event that the Superintendent of Schools and the Provider are unable to resolve the dispute, the matter shall be referred back to the Recipient for final resolution.
8. Termination. This Agreement may be terminated by either party with or without cause upon thirty (30) days written notice to the other. In the event that the Recipient should terminate this Agreement prior to its expiration, it shall be liable for payment of only the pro rata portion of any financial obligations that are due to Provider through the date of termination.
9. Electronic Signatures and Copy. An electronic or facsimile copy of this agreement and any signatures hereon shall be considered for all purposes as originals.
10. Counterparts. This Agreement may be executed in as many counterparts as may be required, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute a single instrument.

THIS AGREEMENT entered into and made effective as of the date first above written.

RECIPIENT:

THE SCHOOL BOARD OF
OKALOOSA COUNTY, FLORIDA

ATTEST:

By: _____
Marcus D. Chambers
Superintendent of Schools

By: _____
Lamar White
Chairman

Date Signed: _____

Date Signed: _____

WITNESSES:

PROVIDER:

NOVA Engineering and Environmental, LLC

Signature: _____

By: _____

Printed Name: _____

Joseph Berko, Project Manager

Date Signed: _____

Signature: _____

Printed Name: _____

Insurance Requirements: (To be completed by Risk Management)		
Professional Liability _____	General Insurance Requirements <input checked="" type="checkbox"/> _____	Insurance Not Required _____

APPROVED BY:

ATTORNEY ☒

RISK MANAGEMENT ☒

PURCHASING ☒

FINANCE ☒



May 15, 2024

Okaloosa County School District
Facilities Planning & Maintenance Department
461 School Avenue
Crestview, Florida 32536
Smithb@okaloosaschools.com

Attn: Dr. Bill Smith

Subject: Proposal to Perform Building Official Services
Okaloosa County School District Miscellaneous District Projects
Okaloosa County, Florida
NOVA Proposal Number 10107-5124097

Dr. Smith:

NOVA Engineering and Environmental, LLC (NOVA) appreciates the opportunity to submit this proposal to perform Building Official support services for the Okaloosa County School District. This proposal includes our understanding of the project based on the provided information, our proposed scope of services, fees and schedule, and method by which to authorize our services.

PROJECT INFORMATION

We understand you are interested in NOVA providing Building Official support services to the Okaloosa School District Facilities Planning and Maintenance Department. Our scope of services and budget estimate are based on our understanding of the level of required effort that you desire from NOVA, as well as our prior experience performing similar services.

PROPOSED SCOPE OF WORK

Based on our recent conversations, we understand that the following services have been requested:

- Issuance of required Building Permits and the review of completed project closeout documents related to the issuance of Certificates of Occupancy and/or Completion.
- In addition to providing Building Official support services, we can also perform plan reviews associated with a project's general building, structural, mechanical, electrical, and plumbing components.
- If deemed necessary by the Building Official, NOVA can also perform building code inspections to reasonably assure compliance with the Florida Building Code.

COMPENSATION

We have developed the recommended budgets detailed herein based on the proposed scope of services and our prior experience with similar construction projects to estimate the quantities anticipated during construction.

Estimated Fees - Building Official Services

Building Official Services (20 hrs/wk x 52 wks x \$150/hr, portal-to-portal).....	\$ 156,000
Meetings/Consultations (Rates shown below, portal-to-portal).....	\$ 10,000
Travel (Mileage).....	\$ 4,000
Admin/Clerical/PM.....	\$ 5,000
TOTAL ESTIMATED COST	\$ 175,000

HOURLY RATES:

Master Code Professional	\$150/hour
Building or MEP Inspector (for meetings or consultation)	\$95/hour
Building or MEP Plan Reviewer (for meetings or consultation)	\$110/hour
Administrative Staff	\$55/hour
Mileage	\$0.575/mile

To keep you updated on the charges incurred and to provide a comparison of charges incurred versus budgeted funds, we will invoice monthly.

AUTHORIZATION OF SERVICES

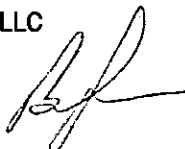
Please acknowledge your acceptance of this proposal and attached Terms & Conditions, which are considered an integral part of this contract, by signing below and returning a copy of this letter to the undersigned. If the standard General Terms and Conditions attached are determined to be in conflict with any provision of this proposal's text, then the text of the proposal itself shall govern in said instance, but the remaining provisions and sub-provisions included in the attached General Terms and Conditions shall not be affected thereby.

We would like to thank you for considering NOVA for your professional service needs, and we look forward to being of service.

Respectfully submitted,
NOVA Engineering and Environmental, LLC



Joseph Berko
Project Manager



William Lawrence
Regional Manager



Jason Hill
Executive Vice President

Attachments: Professional Acceptance Agreement Form
NOVA General Terms and Conditions

NOVA ENGINEERING AND ENVIRONMENTAL, LLC **PROFESSIONAL ACCEPTANCE AGREEMENT FORM**

DATE: May 15, 2024	PROPOSAL NO.: 10107-5124097
PROJECT NAME AND ADDRESS Building Official Services Okaloosa County School District Okaloosa County, Florida	CLIENT NAME & ADDRESS Okaloosa County School District Facilities Planning & Maintenance Dept. 461 School Avenue Crestview, Florida 32536 (850) 689-7158 Smithb@okaloosaschools.com
Fee*: <div style="text-align: right;">Accepted</div>	
BUILDING OFFICIAL SERVICES \$175,000 <div style="float: right;"><input type="checkbox"/></div>	
<i>*for complete pricing information, see text of proposal.</i>	

The attached General Terms and Conditions will govern during execution of this project. NOVA will invoice monthly and our payment terms are net 30 days. This proposal is valid for 90 days. If this proposal is acceptable, please sign and return this Professional Acceptance Agreement Form via e-mail to Joe Berko at jberko@usanova.com.

AUTHORIZED BY:	INVOICE TO:
Signature	Firm
Name	Name
Title	Address
Date	Fed Tax ID:
	Email Address:

NOVA Engineering and Environmental LLC
GENERAL TERMS AND CONDITIONS

1. SCOPE OF WORK

NOVA Engineering and Environmental LLC (NOVA) shall perform the services limited to and specifically defined in this Agreement (including any Project Specific condition attached hereto) and shall invoice the Client in accordance with the compensation section of this Agreement. Any estimate of cost to the Client as stated in this Agreement or any of the accompanying schedules shall not be considered as a fixed price, but only an estimate (unless otherwise specifically stated in this Agreement). NOVA will provide additional services under this Agreement as requested by the Client in writing subject to acceptance by NOVA. Client will be invoiced for additional services at NOVA's standard rates or as mutually agreed upon, including but not limited to, re-reviews, re-inspections, re-tests, stand-by time, scope changes, services outside normal business hours or services provided beyond the estimated project duration. To the extent these General Terms and Conditions are part of a proposal for services, the proposal shall be valid for ninety (90) days unless otherwise stated. Once a proposal is accepted, these General Terms and Conditions shall apply to all services performed and shall survive any termination of the Agreement or completion of services.

Notwithstanding any other provision of this Agreement or any other agreement entered into by NOVA with respect to the Project, NOVA shall not have control or charge of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, for safety precautions and programs in connection with work or activities at the project site, for the acts or omissions of any contractor, subcontractors or any other persons performing any work or undertaking any activities at the project site, or for the failure of any of them to carry out any work or perform their activities in accordance with their contractual obligations, including, but not limited to, the requirements of any drawings, specifications or other documents prepared by NOVA (if any).

The review of contractor submittals (for example, shop drawings or project samples) is not included in NOVA's Scope of Services unless specifically set forth in this Agreement. If such services are to be provided, the review is conducted only for the limited purpose of checking for conformance with information given and the design concept expressed in the construction drawings and specifications prepared by NOVA (or by others if so set forth in the Agreement) and is not conducted for the purpose of determining the accuracy and completeness of details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the contractor, all of which remain the responsibility of the contractor to the extent required by its contract. NOVA's review shall not constitute approval of safety precautions or of construction means, methods, techniques, sequences, or procedures. NOVA's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the drawings, specifications and other documents applicable to the contractor's obligations, NOVA shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the drawings, specifications and other documents prepared by NOVA.

Neither site visits for any purpose nor the observation by NOVA of any contractor's work are included in NOVA's scope of services unless specifically set forth in this Agreement. If NOVA is engaged to visit the site and conduct observations of a contractor's work, NOVA shall provide such services at the intervals agreed with Client in writing (or if no such interval is agreed upon in writing, then at such intervals as NOVA deems appropriate given any budgetary constraints imposed by Client), subject to any limitations on the number of such visits set forth in this Agreement. The general purpose of such observations is to become generally familiar with the progress and quality of the construction work as described in the drawings, specifications or other documents specifically identified in this Agreement and to determine, in general, if such construction work is proceeding in accordance with such drawings, specifications or other identified documents. NOVA shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of such construction work. On the basis of such on-site observations as an engineer, NOVA shall keep Client informed of the progress and quality of such construction work and shall endeavor to guard the Client against defects and deficiencies in such work of contractor.

2. RIGHT OF ENTRY

The Client, at its sole cost and expense, will provide for reasonable right of entry of NOVA personnel to perform the scope of work and all necessary equipment to the project site or sites, in order to complete the work.

3. INVOICES

NOVA will submit invoices to Client monthly and a final bill upon completion of services. There shall be no retainage, unless otherwise agreed upon in the Agreement. NOVA shall furnish insurance certificates, lien waivers, affidavits or other reasonably available documents as and when requested by Client provided all amounts due to NOVA have been paid.

Payment is due within thirty (30) days after the receipt of invoice. Interest charges will start to accrue forty-five (45) days from the invoice date. Client agrees to pay an interest charge equal to the lesser of one and one-half percent (1½%) per month, or the maximum rate allowed by law, on past due accounts. NOVA shall be entitled to recover any and all costs incurred, including attorneys' fees ("Collection Costs") in connection with its efforts to collect past due sums. The minimum amount of such Collection Costs is agreed to be the lesser of (1) ten percent (10%) of the past due amount or (2) the maximum amount allowed by law. Any attorney's fees, collection fees or other costs incurred in collecting any delinquent amount shall be paid by Client. The Client agrees to pay NOVA for its services in accordance with this Agreement, regardless of whether or not he has been paid by his client.

In the event that the Client disputes any items billed in an invoice, the Client shall notify NOVA within ten (10) days specifying the complaint and, in the meantime, all amounts to which there is not a reasonable and good faith dispute to payment shall be paid promptly. Any dispute not raised within such ten (10) day period is waived. The Client's failure to make timely payment due under this Agreement in accordance with the terms of this Agreement shall constitute a material breach of this Agreement and NOVA shall be entitled, upon seven (7) days written notice to Client to terminate this Agreement or, at its option, suspend its performance until all sums then due under this Agreement have been paid.

If NOVA is called upon by Client, or subpoenaed by any other person, to testify or produce records in an action at law, equity, arbitration, or in a pre-trial hearing or conference, as to any work performed by anyone in connection with the Project, NOVA shall be paid by the Client for all time spent while testifying and preparing therefor and producing such records in accordance with the rates set forth in the attached Agreement.

4. SAFETY

NOVA is only responsible for the safety on site of its own employees and subcontractors. However, this shall not be construed to relieve the Client or any of its contractors from their responsibilities for maintaining a safe jobsite. Neither the professional activities of NOVA, nor the presence of NOVA's employees and subcontractors shall be construed to imply NOVA has any responsibility for job safety or any activities on site performed by personnel other than NOVA's employees or subcontractor.

5. STANDARD OF CARE

Service performed by NOVA under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the location where the services are to be performed ("Standard of Care").

Notwithstanding anything in this Agreement to the contrary, NOVA shall only be liable to pay damages to Client arising out of or in connection with the Services or this Agreement, to the extent that such damages are caused by, and are in proportion to, the negligence of, or breach of the Standard of Care by, NOVA. If NOVA is considered to be liable jointly with any third parties, the portion of damages payable by NOVA shall be limited to the portion of liability which is attributable to NOVA's breach of the Standard of Care on a comparative fault basis. Client acknowledges that NOVA's services will be rendered without any warranty, express or implied and all such warranties are expressly waived by Client. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party, including the project owner (if not the Client) and any contractor, subcontractor, vendor or material supplier, against either the Client or NOVA.

6. INSURANCE & GENERAL LIABILITY

NOVA represents and warrants that it and its agents, staff and consultants employed by it are protected by worker's compensation insurance and that NOVA has such coverage under public liability and property damage insurance policies which NOVA deems to be adequate and in line with other professional service firms currently practicing under similar conditions. Certificates for all such policies of insurance shall be provided to Client upon request in writing. Additional insurance, if requested in writing by Client prior to commencement of services, will be obtained by NOVA, if procurable, and charged to the Client.

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The Client shall cause any contractor responsible for the construction of work (or related activities) designed, specified or reviewed by NOVA or responsible for any other activities relating to NOVA's services, to hold harmless, indemnify and defend NOVA, to the fullest extent permitted by law, from and against any and all damages, liabilities, claims, suits, costs and expenses (including reasonable attorney's fees and other costs of investigation and defense) arising in connection with the negligence, breach of contract or strict liability of any contractor or any of their subcontractors or any of their vendors. Client shall also name, and cause such contractor(s) to name, NOVA as additional insureds on its and each such contractor's Commercial General Liability Insurance policy and Umbrella/Excess liability insurance policy (with policy limits at the greater of the limits required for the Project or Five Million Dollars per occurrence and in the per project aggregate) and to maintain such coverage until the completion of its contract and to provide NOVA with a Certificate of Insurance so naming NOVA as an additional insured on an annual basis for so long as Client and/or contractor maintains or is obligated to maintain such coverage.

7. DISPUTES

All claims, disputes, controversies or matters in question arising out of, or relating to, this Agreement or any breach thereof, including but not limited to disputes arising out of alleged design defects, breaches of contract, errors, omissions, or acts of professional negligence, (collectively "Disputes") shall be governed by Florida law and shall be submitted to non-binding mediation before and as a condition precedent to pursuing any other remedy. Upon written request by either party to this Agreement for mediation of any dispute, Client and NOVA shall select a neutral mediator by mutual agreement. If a Dispute cannot be settled through mediation as set forth above, then such Dispute, if involving amounts less than \$100,000, shall be decided by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect, or any other appropriate rules upon which the parties may agree following termination of mediation. Notwithstanding any other provisions of this Section, in no event shall a demand for mediation be made, or any other proceeding initiated, more than two (2) years from the date the party making demand knew or should have known of the dispute or five (5) years from the date of substantial completion of Nova's Services, whichever date shall occur earlier. All mediation, arbitration, or litigation shall take place in Broward County, Florida, unless the parties agree otherwise. The fees of the mediator or arbitrator(s) and the costs of transcription and other costs incurred by the mediator or arbitrator(s) shall be apportioned equally between the parties. Thereafter, with respect to any Disputes involving amounts equal to or greater than \$100,000, if any legal action or other proceeding is brought with respect to such Dispute, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, costs and expenses, incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

8. DELAYS IN WORK

In no event, will NOVA will be responsible for delays in the work which is beyond our reasonable control or caused by Client or its agents, consultants, contractors or subcontractors. Stand-by or non-productive time for delays in our work caused by Client or its agents, consultants, contractors or subcontractors may be charged to the Client unless provided for as a separate item in the Agreement or otherwise as mutually agreed upon.

9. TERMINATION

This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms of the Agreement. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In all events of termination, NOVA shall be paid for services performed up to and through the date of termination plus reasonable expenses to demobilize. In the event of termination, or suspension for more than three (3) months, NOVA shall, at its option, be permitted to terminate this Agreement upon seven (7) days written notice to Client. Further, if said termination is prior to NOVA's completion of all reports contemplated by this Agreement, NOVA may complete such analyses and records as are necessary to complete its files and may also complete a report on the services performed to date of notice of termination or suspension. The expenses of termination or suspension shall include all direct costs of NOVA in completing such analyses, records, and reports and shall be due and payable by Client promptly upon invoice from NOVA, together with all reasonable termination costs and expenses.

10. ASSIGNS

This Agreement may not be assigned by either party without the prior written consent of the other party, provided, however, that NOVA may assign this Agreement in the case of sale of all or substantially all of its assets or equity. To the extent consent is required it shall not be unreasonably withheld.

11. OWNERSHIP OF DOCUMENTS

All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents prepared by NOVA, as instruments of service, shall remain the property of NOVA and shall retain all common law, statutory and other reserved rights, including copyrights ("NOVA Documents"). Contingent on the Client's full and timely payment of all sums due under this Agreement, NOVA grants Client a non-exclusive license to use the final and complete versions of the NOVA Documents solely and exclusively for purposes set forth in this Agreement. The foregoing license does not extend to any CADD files or 3D model created by NOVA, unless expressly set forth herein. If NOVA Documents are prepared "for construction", the license granted in the preceding sentences of this Paragraph permits the Client to authorize the contractor and subcontractors, and material or equipment suppliers to reproduce applicable portions of NOVA Documents solely and exclusively for use in performing their services or construction for the Project. NOVA Documents shall only be used for their intended purpose. NOVA Documents are not to be used on other projects, for alternations, extensions or additions to this Project or for completion of this Project by others, except by agreement in writing and with appropriate compensation to NOVA. If Client is granted a license with respect to any CADD files or 3D models, Client agrees to be bound to the terms of the NOVA License for Use of Electronic Files and 3D Models. Client agrees that all reports and other work furnished to the Client or his agents, which are not paid for, will be returned upon demand and will not be used by the Client for any purpose whatsoever. NOVA will retain all pertinent records relating to the services performed for a period of three (3) years following submission of the report, during which period the records will be made available to the Client at all reasonable times and an administrative fee may be charged to the Client for retrieval and reproduction of such records.

12. FAILURE TO FOLLOW RECOMMENDATIONS

NOVA will not be held liable for problems that may occur if NOVA's recommendations are not followed.

13. LIMITATION OF LIABILITY

Client agrees that the work created pursuant to this Agreement is for the sole and exclusive use of Client and is not for the benefit of any third parties. Client acknowledges and agrees that in no event shall the liability of NOVA in connection with this Agreement or the services provided pursuant thereto exceed the fee actually paid to and received by NOVA under this Agreement or \$100,000 whichever is greater. This Agreement and the services to be performed hereunder shall in no way be construed as a guarantee of deficient-free construction.

Notwithstanding anything to the contrary contained in this Agreement or provided for under any applicable law, neither NOVA nor Client shall be liable to the other party, either in contract or in tort, for any consequential, incidental, indirect, special or punitive damages, including without limitation any delays damages, loss of future revenue, income or profits or any diminution of value, financing costs or costs of lost opportunities relating to this Agreement, the services or the Project, whether or not the possibility of such damages has been disclosed to the other party in advance or could have been reasonably foreseen by such other party.

14. INDEMNIFICATION

Client agrees, to the fullest extent permitted by law, to indemnify, defend and hold harmless NOVA, and its officers, directors, agents and employees and any of them (collectively, the "NOVA Parties") from all claims, actions, damages, liabilities, losses, costs and expenses, including reasonable attorney's fees and defense costs (collectively "Losses"), arising out of, or in any way connected with, the performance or nonperformance of NOVA's obligations under this Agreement (including, without limitation, any act of negligence, omission or default by the NOVA Parties), up to an amount not to exceed the greater of \$100,000 or twelve times the amount of the fees charged for the services provided by NOVA in connection with this Agreement and the services hereunder. The parties agree that the foregoing amount of said indemnification bears a reasonable commercial relationship to the services provided by NOVA and that the indemnification provided herein is considered a part of the project specifications. Notwithstanding the foregoing, the NOVA Parties shall not be entitled to indemnification hereunder for any Losses resulting from the NOVA Parties'

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gross negligence, or willful, wanton or intentional misconduct or for any statutory violation or punitive damages (except to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of Client or any of the Client's contractors, subcontractors, sub-subcontractors, materialmen or agents of any tier or their respective employees). Except as set forth in the preceding sentence, the NOVA Parties rights to indemnification shall include, without limitation, Indemnification for any and all Losses which may be suffered by any NOVA Party as a result of any (i) failure of Client to follow or implement any of its recommendations, (ii) any breach by Client of its obligations under the Agreement, and (iii) exposure of NOVA's employees or agents to any hazardous materials at the jobsite.

Upon notice by the NOVA Parties, Client shall defend the NOVA Parties with counsel chosen by NOVA Parties, subject to the consent of Client, which consent shall not be unreasonably withheld. The parties agree that this duty to defend is separate and distinct from any indemnity obligation, and the duty shall extend to any claims asserted against the NOVA Parties arising out of or related to the project, regardless of whether Client is obligated to indemnify the NOVA Parties for the loss, claim, or damage.

15. HAZARDOUS MATERIALS

It is acknowledged by both parties that NOVA's scope of services does not include any services related to asbestos or hazardous or toxic materials unless specifically identified in our scope of services. In the event NOVA or any other party encounters asbestos or hazardous materials at the jobsite, or should it become known in any adjacent areas that may affect the performance of NOVA's services, NOVA may, without liability for consequential or any other damages, suspend performance of services on the project until the Client retains appropriate specialist consultants or contractors to identify, abate and/or remove the asbestos, hazardous or toxic materials and warrant that the jobsite is in full compliance with applicable laws and regulations. In addition, the Client shall hold harmless, defend and indemnify NOVA Parties, from and against any and all Claims arising, in whole or in part, out of the discovery, presence, handling, removal or disposal of, or exposure of persons to, any hazardous materials in any form at the Project site, including, but not limited to, asbestos, asbestos products, polychlorinated biphenyl (PCB), bacteria, mold, fungi, lead based paints or other similar materials or other toxic substances, infectious materials, or contaminants.

16. SAMPLE DISPOSAL

Unless other arrangements are made, NOVA will dispose of all soil and rock samples remaining at the time of report completion. Further storage or transfer of samples can be arranged at Client's prior written request, subject to a reasonable charge by NOVA. Client acknowledges that contaminated drill cuttings, sample spoils, wash water, and other materials may be produced as a result of encountering hazardous materials at the site. In such event, NOVA shall properly contain, label, and store such materials on-site, and Client shall be responsible for its proper transportation and disposal.

17. AQUIFER CONTAMINATION

Client acknowledges that it is impossible for NOVA to know the exact composition of a site's subsurface, even after conducting a comprehensive exploratory program. As a result, there is a risk that drilling and sampling may result in contamination of certain subsurface areas. Although NOVA will take reasonable precautions in accordance with the Standard of Care to avoid such an occurrence, Client waives any claim against, and (without limiting the generality of Section 14 hereof) agrees to indemnify and hold harmless NOVA in accordance with the terms and conditions set forth in this Agreement from any claim or liability for injury or loss which may arise as a result of subsurface contamination caused by drilling, sampling, or monitoring well installation. Client also agrees to adequately compensate NOVA for any time spent and expenses incurred in defense of any such claim.

18. DEFINITIONS

As used herein, the following words and their derivative words or phrases have the meanings indicated, unless otherwise specified in the various sections of this Agreement.

AGREEMENT: means the Agreement between the parties, which shall describe and govern Client's engagement of NOVA to provide services in connection with the project or work identified in the proposal (Proposal), and consists of the Proposal, these General Terms and Conditions, and any exhibits or attachments referenced in any of these documents.

CERTIFY, CERTIFICATION: NOVA's opinion based on its observation of conditions, knowledge, information and beliefs. It is expressly

understood such opinions relieve no other party of any responsibility or obligation he or she has accepted by contract or custom.

ESTIMATE: An opinion of probable cost for services made by NOVA. The accuracy of probable cost for services opinion cannot be guaranteed.

INSPECT, INSPECTION: The visual observation of certain aspects of construction to permit NOVA to render its professional opinion as to whether the contractor is performing the Work in a manner indicating that, when completed, the Work will be in general accordance with the approved documents. Such observations do not relieve any party from fulfillment of their customary and contractual responsibilities and obligations.

19. LIMITATION OF LIABILITY

It is intended by the parties to this Agreement that NOVA's services under this Agreement shall not subject NOVA's individual employees, officers, shareholders, managers, members or directors to any personal legal exposure for the risks associated with the services to be rendered on the project. Therefore, and notwithstanding anything to the contrary contained herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against NOVA, a Delaware limited liability company, and not against any of NOVA's employees, shareholders, officers, managers, members or directors.

TO THE FULLEST EXTENT PERMITTED BY LAW, PURSUANT TO FLORIDA STATUTE § 558.0035, NO EMPLOYEE, OFFICER, SHAREHOLDER, MANAGER, DIRECTOR OR AGENT OF NOVA SHALL BE INDIVIDUALLY LIABLE TO CLIENT OR ANY OTHER PERSON FOR ANY NEGLIGENCE, MISCONDUCT OR WRONGFUL ACTS IN CONNECTION WITH THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR OTHERWISE, WHETHER SUCH CLAIMS ARE BASED IN CONTRACT, STATUTE, OR TORT.

20. MISCELLANEOUS

AMENDMENT: This Agreement may be amended, modified or supplemented, but only in writing signed by each of the parties hereto.

WAIVERS: The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term contained in this Agreement shall be effective unless in writing and signed by the waiving party, and no waiver in any one or more instances shall be deemed to be a continuing waiver of any such condition or breach in other instance or a waiver of any other condition or breach of any other term.

SEVERABILITY: If any provision or sub-provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions or sub-provisions contained herein shall not be affected thereby.

INTEGRATION: This Agreement represents the entire understanding and agreement among the parties with respect to the subject matter hereof, and supersedes all other negotiations, understandings and representations (if any) made by and among such parties.

SOVEREIGN IMMUNITY: In the event that the Client is the State of Florida or another "state agency or subdivision" within the meaning of Florida Statute Section 768.28(2), then NOVA (and all NOVA Parties) shall for all purposes provided in this Agreement and otherwise be deemed an agent of the Client for purposes of sovereign immunity whether under Florida Statute Section 768.28 and otherwise, including without limitation Florida Statute Section 768.28(9)(a). Client shall fully cooperate, at its sole cost and expense, with NOVA and take all necessary and appropriate actions to qualify NOVA (and the NOVA Parties) for and defend its and their right of sovereign immunity as an agent of the Client for purposes of Florida law, including without limitation under Florida Statute §768.28.

NOVA Employees: Client agrees not to recruit or hire any NOVA employee currently or previously working under this Agreement during the contract period or within twelve months of termination of the contract, either for themselves or any third party. In the event Client violates this clause, NOVA shall have the right of injunctive relief, and Client shall pay NOVA \$25,000 or 25% (percent) of the employee's current annual, base salary, whichever is greater, with payment being made within 15 days of NOVA's written notice to Client of said violation.