

Novation Agreement

This Agreement is made this 21st day of June 2012, among Tierra, Inc. ("Tierra"), Tierra South Florida, Inc. ("Tierra South") and The School Board of Palm Beach County, Florida ("Owner"), collectively "Parties".

1. On July 17, 2008 Tierra was awarded a contract, entitled Standard Form of Agreement Between Owner and Consultant ("Agreement"), for the Geotechnical Engineering/Construction Materials Testing/Threshold Inspection Services on Continuing Contract Project to provide Geotechnical Engineering, Construction Materials Testing and Threshold Inspection Services on an as needed basis ("Project"). *A true and accurate copy of the Agreement is attached as **Exhibit 1**.* On May 19, 2011, the Agreement was amended to, among other things, extend the date of the Agreement to July 16, 2012. *A copy of the First Amendment to the Agreement is attached as **Exhibit 2**.* The Agreement and the First Amendment of the Agreement shall collectively be called "CONTRACT."
2. Tierra has performed services under the CONTRACT.
3. Tierra South is a certified M/WBE firm licensed, insured and meets the qualifications to successfully perform any Work under the CONTRACT.
4. Tierra, Tierra South and Owner thus agree that, effective upon execution of this Novation Agreement ("Novation") by all Parties and approval by the Owner's Board, Tierra, pursuant to Article 8.3 of the CONTRACT hereby assigns all of its rights, obligations, and liabilities under the CONTRACT to Tierra South. Under this Novation, Tierra South assumes all responsibilities of, and has all rights of, Tierra under the CONTRACT as if Tierra South were the original party to the CONTRACT. Simultaneous to the execution of this Novation, Tierra South shall execute a Standard Form of Agreement between Owner and Consultant, a First Amendment, and Second Amendment. *A true and accurate copy of the Form Agreement between Owner and Consultant , First Amendment – Tierra South - is attached and incorporated as **Exhibits 3, 4, and 5, respectively**.*
5. Tierra releases the Owner of any and all claims that it has or could have had under the CONTRACT.
6. Tierra agrees to fully defend, indemnify and hold harmless the Owner from any and all claims (whether individually or via pass-through or similar agreement), liens or other actions which could or may have been asserted by Tierra's subcontractors, subconsultants, or materialmen, or any party working by, through or under Tierra as to the CONTRACT or on the Project.

7. Tierra is released of all liabilities and obligations under the CONTRACT, and warrants that it will not look to the Owner for any payments of any kind in connection with the CONTRACT. The Owner will look to Tierra South for performance of all obligations of the CONTRACT.
8. Tierra South assumes all benefits, obligations, and liabilities under the CONTRACT; and the Standard Form of Agreement between Owner and Consultant, Tierra South, shall relate back to July 17, 2008, and First Amendment between the Owner and Tierra South shall relate back to May 19, 2011. The Owner will look to Tierra South for any and all claims, if any, it may have beginning on July 17, 2008 to present.
9. This Novation and its Exhibits represent the entire agreement of the Parties. This Novation is governed by Florida Law. Venue for enforcement of this Novation and Exhibits shall lie in Palm Beach County, Florida.

Agreed:

Novation Agreement

Board Date: June 20, 2012

Agenda Item: CP-3

Geotechnical Engineering, Construction Materials Testing and Threshold Inspection Services on an as needed basis

Tierra, Inc.

By:_____

Its_____

Attest:_____

Title:_____

Date:_____

Agreed:

Novation Agreement

Board Date: June 20, 2012

Agenda Item: CP-3

**Geotechnical Engineering, Construction Materials Testing and Threshold Inspection
Services on an as needed basis**

Tierra South Florida, Inc.

By: _____

Its _____

Attest: _____

Title _____

Date: _____

Agreed:

Novation Agreement

Board Date: June 20, 2012

Agenda Item: CP-3

**Geotechnical Engineering, Construction Materials Testing and Threshold Inspection
Services on an as needed basis**

THE SCHOOL BOARD OF
PALM BEACH COUNTY, FLORIDA

Superintendent

Date: _____

Chairperson

Date: _____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

School Board Attorney

Date