

**AMENDMENT TO ASBESTOS CONSULTING SERVICES PROPOSAL
BETWEEN THE BOARD OF EDUCATION OF GAVIN SCHOOL DISTRICT NO. 37,
LAKE COUNTY, ILLINOIS
AND
TEM ENVIRONMENTAL, INC.**

This Amendment is hereby made a part of that certain asbestos consulting services proposal by and between TEM Environmental, Inc. (“Consultant”), and the Board of Education of Gavin School District No. 37 (“Owner”) (collectively the “Parties”).

WHEREAS, Consultant provided the Owner with an Asbestos Consulting Services Proposal for 2019 Flooring Replacement Project at Gavin Middle School South dated December 24, 2018 (“Proposal”), to provide certain professional services related to asbestos remediation; and

WHEREAS, the Owner wishes to engage the services of the Consultant pursuant to the Proposal, as amended in accordance with the terms and conditions set forth below.

NOW THEREFORE, in consideration of the mutual promises herein set forth and other good and valuable consideration which is hereby acknowledged by the Parties, it is agreed as follows:

1. Definitions

Contract Documents shall mean this Amendment, the Proposal, any Consultant drawings and specifications, as well as any additional drawings, and any addenda.

Services shall mean the services required of the Consultant under the Contract Documents.

Project means the 2019 Flooring Replacement Project at Gavin Middle School South.

2. Governing Provisions

In the event of a conflict between the terms and conditions of this Amendment and those of any other Contract Document, the terms and conditions herein shall govern. All other provisions of the Contract Documents not otherwise modified herein shall remain in full force and effect.

3. The Services

3.1 Professional Services. The Consultant shall provide the services set forth in the Proposal and as provided herein. The Consultant shall provide administration of the contract for construction in accordance with the Contract Documents. The Consultant acknowledges that it has been engaged to provide professional services because of its character, expertise, experience and qualifications in dealing with projects of similar size and scope. The Consultant shall exercise skill and care consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Additionally, the Consultant represents that it has all licenses required by law to perform the Services.

3.1.1 During the development of the Construction Documents, the Consultant shall assist the Owner in the development and preparation of (1) procurement information that

describes the time, place, and conditions of bidding, including bidding forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Consultant shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms. The Consultant shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Consultant shall assist the Owner in (1) obtaining competitive bids; (2) confirming responsiveness of bids and evaluating the qualifications of the bidders; (3) determining the successful bid, if any; and (4) awarding and preparing contracts for construction.

3.1.2 The Consultant shall assist the Owner in competitively bidding the Project by:

- .1** preparing and facilitating the distribution of bidding documents to prospective bidders;
- .2** organizing and conducting a pre-bid conference for prospective bidders;
- .3** preparing responses to questions from prospective bidders and providing clarifications and interpretations of the bidding documents to the prospective bidders in the form of addenda; and
- .4** assisting the Owner with organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

3.1.3 The Consultant, as a representative of the Owner, shall visit the site to determine if the Project is being completed on schedule and in accordance with the Contract Documents (1) to become familiar with and to keep the Owner informed about the progress and quality of the portion of the work completed, (2) to report to the Owner observed defects and deficiencies in the work, and (3) to determine if the work is being performed in a manner indicating that the work, when fully completed, will be in accordance with the Contract Documents.

3.1.4 The Consultant shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. The Consultant shall be responsible for the Consultant's negligent acts or omissions, but shall not be responsible for the acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the work.

3.1.5 The Consultant shall review and certify amounts due to the Contractors and shall issue certificates in such amounts based upon the Consultant's observations of the Project. The Certificate of Payment shall constitute a representation to the Owner that, based upon the Consultant's evaluation of the work and the data comprising the Contractor's Application for Payment, that the work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents, that the Contractor has submitted proper lien

waivers covering the work that is the subject of the payment application and the Contractor is entitled to payment in the amount certified.

3.1.6 The Consultant shall review and approve or take other appropriate action upon a Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance between the information given and the design concept expressed in the Contract Documents. The Consultant's action shall be taken with reasonable promptness to avoid unnecessary delay in the work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Consultant's professional judgment to permit adequate review.

3.1.7 The Consultant shall review and sign or take other appropriate action on Change Orders and Construction Change Directives for the Owner's approval.

3.1.8 The Consultant shall conduct site visits to determine the date or dates of Substantial Completion and the date of final completion. The Consultant shall forward to the Owner warranties and similar submittals from the Contractor required by the Contract Documents. The Consultant shall issue a final Project Certificate for Payment upon compliance with the requirements of the Contract Documents.

3.1.9 When conducting site visits to determine the date or dates of Substantial Completion, the Consultant shall prepare a list of incomplete or unsatisfactory items and a schedule for their completion ("Punch List") and shall provide a copy thereof to the Contractor. The Consultant shall confirm that the items on the Punch List are completed by the Contractor at no additional cost to the Owner.

3.2 Consultants and Agents. The Consultant shall exercise reasonable care to engage additional consultants, consultants, agents, employees and officers who shall possess the experience, skill, knowledge and character necessary to qualify them individually for the particular duties they perform and who shall perform all services in conformity with the standards of reasonable care and skill with respect to professional services they are rendering. Said consultants shall carry professional liability insurance. The Consultant assumes full responsibility for the negligent acts and omissions of its consultants. All coverages for said consultants and agents shall be subject to all the requirements stated herein.

3.3 Compliance with Laws. The Consultant represents that it shall exercise reasonable care and skill to comply with all applicable federal and state laws as well as rules, regulations and specifications adopted by the Illinois State Board of Education and any other agency with authority over the design, construction or rehabilitation of school facilities and the Project. The Consultant is responsible for all materials specified by the Consultant as to appropriateness for the intended use associated with an educational facility.

4. Drawings

The Owner shall be supplied with a final copy of the drawings and specifications generated by the Consultant for the Project and shall be permitted to use the drawings and specifications without restriction.

5. Permits

The Consultant shall ensure that the contractor(s) apply for and obtain all permits, licenses, approvals and inspections necessary to commence and complete the Project.

6. Termination

The Contract Documents may be terminated by the Consultant upon not less than seven (7) days' written notice should the Owner fail to substantially perform in accordance with the terms of the Contract Documents through no fault of the Consultant. The Contract Documents may be terminated by the Owner with or without cause upon not less than seven (7) days' written notice. The Owner shall, within thirty (30) calendar days of termination, pay the Consultant for all services rendered and all costs incurred up to the date of termination, in accordance with the payment provisions of the Contract Documents.

7. Payment

7.1 Consultant's Fee. The Consultant's compensation shall be computed as detailed in the Proposal. Notwithstanding anything in the Contract Documents to the contrary, the Consultant's total fee shall not exceed \$26,883.00, unless agreed upon by the Owner in writing.

7.2 Requests for Payment. Consultant shall submit to Owner for its approval a request for payment ("Request for Payment") in form and substance satisfactory to Owner. Each Request for Payment shall set forth the amount due for services rendered, a detailed breakdown of the amount and the sum of all prior payments. The Request for Payment for the Consultant's services shall not exceed the dollar amount attributable to the percentage of work completed by the Consultant at the time of submission of the Request for Payment. The Consultant shall furnish with each Request for Payment waivers of lien for itself in form and substance satisfactory to Owner and any other such forms as required by Owner, to assure an effective waiver of mechanic and materialmen liens in compliance with the laws of the State of Illinois. Owner shall review each such Request for Payment and make such exceptions as Owner reasonably deems necessary or appropriate under the circumstances then existing.

7.3 Prompt Payment Act. Payments by the Owner shall be made in accordance with the Illinois *Local Government Prompt Payment Act*, 50 ILCS 505/1 *et seq.* For purposes of calculating the Consultant's fee and compensation, the construction cost shall not include additions by change order to the construction cost as a result of errors or omissions by the Consultant or the Consultant's consultants.

8. Indemnification

The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Owner, its individual Board members, agents and employees (collectively, "Indemnitees"), against all damages, liabilities, fines, and costs (whether to property or person), including reasonable attorneys' fees and defense costs, to the extent caused by, related to or connected with the Consultant's performance of the Services and that of its subconsultants or anyone for whom the Consultant is legally liable and any breach of the Contract Documents by Consultant. The Consultant shall not be obligated to indemnify the Owner for the Owner's own negligence.

Consultant agrees to assume the entire liability for all personal injury claims suffered by its own employees allegedly injured on the Project arising out of, related to or connected with Consultant's negligence; to waive any limitation of liability defense based upon the *Workers' Compensation Act*, court interpretations of said Act or otherwise; and to contribute to, indemnify and defend the Indemnitees from and against all such loss, expense, damage or injury, including reasonable attorneys' fees, that any of them may sustain as a result of such claims, except to the extent that Illinois law prohibits indemnity for one's own negligence.

9. Insurance

9.1 Insurance Coverage Requirements. The Consultant shall procure and maintain professional liability insurance coverage beginning with the commencement of the performance of work by Consultant until the date of completion of the Consultant's services in the amount of \$2,000,000 per claim and \$2,000,000 in the aggregate. Further, the Consultant shall also procure and maintain at its own cost and expense (1) comprehensive general liability coverage on an occurrence basis to insure all loss (including, but not limited to, attorney's fees and costs), claims, demands, or actions for damage to property, or bodily and personal injury to or death of any one or more persons in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, (2) umbrella or excessive liability coverage in a minimum amount of \$5,000,000 per occurrence and in the aggregate, (3) worker's compensation coverage in the minimum statutory amounts, and (4) comprehensive auto liability insurance, including hired and non-owned vehicles, in the amount of \$1,000,000 per occurrence and in the aggregate for bodily injury and property damage. The Consultant shall name the Indemnitees as additional insureds on a primary and non-contributory basis on all insurance policies required under the Contract Documents, with the exception of the professional liability insurance and the worker's compensation insurance. Further, the Consultant's excess or umbrella insurance, as the case may be, shall follow the form of the underlying policy in all respects. To the fullest extent permitted by Consultant's insurance policies, Consultant, on behalf of itself and its insurers, waives any right of subrogation either may have against any of the Indemnitees.

9.2 Certificate of Insurance Requirements. Consultant shall provide Owner with a Certificate of Insurance evidencing the insurance required under the Contract Documents prior to commencing work. The certificates of insurance and all insurance policies required to be obtained by the Consultant shall provide that coverages afforded under the policies will not be canceled, reduced or allowed to expire without at least thirty days prior written notice given to the Owner. If any of the insurance coverages are required to remain in force after final payment, all additional certificates evidencing continuation of such coverage shall be submitted with the final application for payment. Upon demand of Owner, Consultant shall provide Owner with full copies of the insurance policies, including but not limited to endorsements, thereto, required under the Contract Documents.

9.3 Insurance Obtained Shall Be Primary Insurance. All insurance required of the Consultant shall be primary and noncontributory. If the additional insureds have other insurance which is applicable to the loss, it shall be on an excess or contingent basis.

10. Owner Shall Not Waive Any Rights of Subrogation

Notwithstanding any other provision in any Contract Document, the Owner shall not, in any manner, be deemed or intended to have waived any right of subrogation which either it or its insurance company may have against the Consultant.

11. Notice of Personal Injury or Property Damage

Consultant shall notify Owner, in writing, of any actual or possible claim for personal injury or property damage relating to the work, or of any occurrence which might give rise to such a claim, promptly upon obtaining first knowledge of same.

12. Authorizations

Any authorization to be made by the Owner as referred to herein must be in writing by duly authorized representatives of the Owner in order to be binding upon the Owner.

13. Compliance with Laws

The Consultant shall comply with applicable laws, codes and regulations in the performance of the Services. The Illinois *Employment of Illinois Workers on Public Works Act*, 30 ILCS 570/0.01 et. seq., the *Steel Products Procurement Act*, 30 ILCS 565/1 et seq., and the *Prevailing Wage Act*, 520 ILCS 130/1 et seq. shall prevail on this Project to the extent such Acts are applicable and enforceable. The prevailing rate of wages are revised by the Department of Labor and are available on the Department's official website. The Consultant understands that smoking is prohibited on school district property pursuant to State and federal law and shall not allow any of its employees, consultants or agents to smoke on Owner's property. Consultant acknowledges that, under Illinois law, the presence of sex offenders is prohibited on school district property, except in limited circumstances with notice to and approval of Owner. As such, Consultant represents and warrants to Owner that none of Consultant's, or any of its agents' and consultants' employees are prohibited from being present on the Owner's property as a result of being a convicted sex offender or otherwise. No employees of the Consultant, or any of its agents and consultants, performing work under the Contract Documents shall have contact with pupils of the Owner. In the event any employee of the Consultant, or any of its agents and consultants is prohibited from being present on school property, the Consultant shall promptly take all steps necessary to secure the removal of such person from the Project and shall ensure that such person does not return to the Project.

14. Non-Discrimination Clause

The Consultant agrees to fully comply with the requirement of the *Illinois Human Rights Act*, 775 ILCS 5/1-101 et seq., including, but not limited to, the provision of sexual harassment policies and procedures pursuant to Section 2-105 of the Act. The Consultant further agrees to comply with all federal Equal Employment Opportunity Laws, including, but not limited to, the *Americans With Disabilities Act*, 42 U.S.C. Section 12101 et seq., and rules and regulations promulgated thereunder.

The following provisions are included in the Contract Documents pursuant to the requirements of the regulations of the Illinois Department of Human Rights, Title 44, Part 750, of the

Illinois Administrative Code, and Consultant shall be required to comply with these provisions only if and to the extent they are applicable under the law.

As required by Illinois law, in the event of the Consultant's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), the Consultant may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this contract, the Consultant agrees as follows:

(a) That it will not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, marital status, national origin or ancestry, age, citizenship, marital status, physical or mental handicap or disability, military status, or an unfavorable discharge from military service or arrest record status; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.

(b) That, if it hires additional employees in order to perform this contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.

(c) That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.

(d) That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Consultant's obligations under the Illinois Human Rights Act and the Department's Rules. If any such labor organization or representative fails or refuses to cooperate with the Consultant in its efforts to comply with such Act and Rules, the Consultant will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.

(e) That it will submit reports as required by the Department's Rules, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules.

(f) That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules.

(g) That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this contract, the Consultant will be liable for compliance with applicable provisions of

this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails to or refuses to comply therewith. In addition, the Consultant will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

15. No Waiver

No failure of either the Consultant or the Owner to exercise any power given in the Contract Documents or to insist upon strict compliance by the other party with any obligation hereunder and no custom or practice of the Owner or the Consultant at variance with the terms hereof shall constitute a waiver of the right of either party to demand exact compliance with the terms of the Contract Documents. Notwithstanding any other provision in any Contract Document, the Owner shall not, in any manner, be deemed or intended to have waived any claim by making a final payment or a progress pay of any amount. Under no circumstances shall the Owner be deemed to have waived any of the insurance requirements of this Contract by any action or omission.

16. Notice

Any written notices provided for in the Contract Documents and copies of all correspondence shall be transmitted to the Owner and the Consultant at the following addresses:

Consultant:

TEM Environmental, Inc.
174 N. Brandon Drive
Glendale Heights, IL 60139
ATTN: Steven B Geneser

Owner:

Gavin School District 37
25775 West Illinois Highway 134
Ingleside, Illinois 60041
ATTN: Mr. Mark Lindem

17. Complete Understanding

The Contract Documents shall constitute the complete understanding of the Parties.

18. Authority to Execute

Each signatory hereto represents and warrants that he or she has the requisite authority to execute this Amendment and to bind his or her entity to the terms and conditions hereof.

19. Assignment

Consultant shall not assign or otherwise transfer any of its rights or obligations, under the Contract Documents without prior written consent of the Owner, which may be withheld in Owner's sole discretion.

20. Bidding Certification

By entering into the Contract Documents with the Owner, the Consultant certifies that it is not barred from bidding on or entering into the Contract Documents as a result of a conviction for either bid-rigging or bid rotating under Article 33E of the *Criminal Code of 1961* (720 ILCS 5/33E) or by any other law or rule or regulation. The Consultant acknowledges that the Owner may declare the Contract Documents void if it determines that foregoing certification to be false.


OWNER:

CONSULTANT:

**BOARD OF EDUCATION OF
GAVIN SCHOOL DISTRICT
No. 37
LAKE COUNTY, ILLINOIS**

TEM ENVIRONMENTAL, INC.

By: _____
Its: _____


By: Steven B Geneser
Its: Vice President

ATTEST:

1/24/19

By: _____
Its: **Secretary**