

## AGREEMENT FOR ARCHITECTURAL/ENGINEERING SERVICES

THIS AGREEMENT FOR ARCHITECTURAL/ENGINEERING SERVICES (the "Agreement") is dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the School Board of Osceola County, Florida, a body corporate and public (the "Owner"), whose address is 817 Bill Beck Boulevard, Kissimmee, Florida 34744, and \_\_\_\_\_ (the "Architect/Engineer"), , whose address is \_\_\_\_\_.

WHEREAS, Owner desires to employ the Architect/Engineer to perform the services described in this Agreement in connection with Various construction projects at Mill Creek Elementary School\_(the "Project") and Architect/Engineer desires to be employed by the Owner;

WHEREAS, Architect/Engineer was selected pursuant to RFQ SDOC #08-Q-060LK-FPC, and School Board has complied with all requirements of the Consultants Competitive Negotiations Act, in the selection and in negotiations for this Contract; and

WHEREAS, Owner and Architect/Engineer agree that Architect/Engineer will furnish, perform, and provide architectural and/or engineering services required for the Project on the terms contained in this Agreement and the parties desire to reduce to writing their Agreement.

NOW, THEREFORE, Owner and Architect/Engineer, for and in consideration of the provisions, mutual promises, covenants, and conditions herein after set forth or recited, agree as follows:

1. **Recitals.** The recitals in the WHEREAS clauses are incorporated by reference and made a part of this Agreement.
2. **Contract Documents.** The Contract Documents consist of this Agreement, the drawings, specifications, and Addenda issued prior to execution of this Agreement, and the following exhibits:

- Exhibit A- Scope of Services
- Exhibit B - Project Construction Budget
- Exhibit C - Project Schedule
- Exhibit D - Schedule of Progress Payments and Hourly Rates
- Exhibit E – Consultant Reimbursable Expense Guidelines
- Exhibit F - Key Employees
- Exhibit G - Administration of the Contract
- Exhibit H - Truth-In-Negotiation Certificate
- Exhibit I – Supplemental Conditions

Exhibits A-I are incorporated into this Agreement by reference and shall be binding on the Architect/Engineer. In the event of any inconsistency between this Agreement and the Exhibits, the provisions of the Agreement shall govern and control.

3. **Scope of Services.** The Architect/Engineer agrees to furnish and perform professional services for the Project under the terms of the Contract Documents.
- A. **Basic Services.** The Architect/Engineer agrees to furnish and perform professional services for the Project at a total construction cost to Owner which does not exceed the Project Construction Budget as defined in Paragraph 4. Architect/Engineer agrees to furnish and perform all of the project administration, basic services, bidding and construction award services, and construction phase services enumerated and described in the Administration of the Contract. The Architect/Engineer shall perform the Basic Services to the satisfaction of the Owner. The nature and scope of the Basic Services are specified in Exhibit A, Scope of Services.
- B. **Additional Services.** The Architect/Engineer agrees to furnish and perform additional services in connection with the project. The Architect/Engineer will perform Additional Services only if those services are requested by the Owner in writing.
- C. **Project Design.** The Project shall be designed in accordance with the following:
1. The current edition of the rules of the Florida State Board of Education, Florida Building Code, and the State Requirements for Educational Facilities in effect at the time this Agreement is approved or at the time the work is performed, whichever is later.
  2. The Osceola County School District Educational Specifications or any educational or ancillary specifications, architectural program, design standard or project requirements developed by the Owner specifically for the Project.
  3. The provisions of the Florida Statutes, including but not limited to chapter 1013, which apply to the Project.
  4. All laws, regulations, or codes addressing site water management, water wells, environmental requirements, and sanitation.
  5. The federal requirements of the Americans with Disabilities Act.
- D. **Permitting, Approvals, etc.** The Architect/Engineer shall prepare, file, and coordinate the approval of all permitting actions and document reviews and approvals with all city, county, state, and federal bodies having jurisdiction and authority for the permitting, documents reviews, and approvals, and shall sign and seal the appropriate drawings as required by law, regulation or rule. The Architect/Engineer shall provide documentation to the Owner.

E. Employees/Agents of Owner. The responsibilities of the Architect/Engineer for performing services under this Agreement and the Construction Documents is not relieved or affected in any respect whatsoever by the presence of, or inspection by, employees or agents of the Owner. The Architect/Engineer agrees that its responsibilities for approving and certifying work for payment are not shared by any employee or agent of the Owner.

4. **Project Construction Budget.** The Architect/Engineer acknowledges that the Owner has provided a Project Construction Budget which is attached as Exhibit B. The Project Construction Budget is defined as the total budget identified for the construction of the Project. As identified in Exhibit B, the total Project Construction Budget consists of site development, building shells and interiors, site improvements, and any items of furniture and equipment that are included in the construction of the Project. The Architect/Engineer agrees that the Project Construction Budget is of the essence to this Agreement. The Architect/Engineer's work product, including without limitation, any designs, plans, and drawings, shall be designed to be constructed within the Project Construction Budget.

A. Redesign. If bids received on the Project are not within the Project Construction Budget, the Architect/Engineer shall perform any and all redesign work, which is reasonable and necessary to redesign the Project so that bids are received within the Project Construction Budget, as a part of its Basic Services. In the event that the redesigned work is necessitated solely by the negligent acts or omissions of the Owner, then the Architect/Engineer shall perform such redesign work as Additional Services.

B. Cost Consultant. Although the Architect/Engineer is responsible for developing a design which meets the Project Construction Budget, the Owner may hire a cost consultant to verify costs on the Project. The Architect/Engineer shall cooperate with the Owner's cost consultant by providing all necessary information for the preparation and updating of all estimates of construction costs throughout all phases of the Project.

The District establishes the Construction Budget in the General Scope of Work for the project. The Architect/Engineer is still responsible for designing the project within the stated Budget and Project Scope. The findings of the Cost Consultant are for comparative purposes only.

5. **Project Schedule.** The Architect/Engineer shall begin the Basic Services after both parties have executed this Agreement and the Architect/Engineer has received a written notice to proceed from the Owner. The Architect/Engineer shall complete the Basic Services in accordance with the Project Schedule attached as Exhibit C.

- A. The parties agree that time is of the essence to this Agreement.
  - B. The schedule for Additional Services, if any, shall be established by the Owner through written notification to the Architect/Engineer that Additional Services are requested.
  - C. Acceleration. The Architect/Engineer shall accelerate the performance of Basic Services and Additional Services in the manner directed by the Owner. The Owner has the sole discretion to determine that acceleration is necessary to maintain the Project Schedule. If acceleration is required as a result of delays caused solely by the Architect/Engineer, the acceleration shall be at no cost to the Owner. If the acceleration is required as a result of delay partially caused by the Architect/Engineer, the portion of the delay not caused by the Architect/Engineer shall be treated as an Additional Service and the portion of the delay caused by the Architect/Engineer shall be treated as a Basic Service at no additional cost to the Owner.
  - D. Before the Architect/Engineer submits the first invoice for professional services to the Owner, the Architect/Engineer shall prepare for the Owner's review and approval a comprehensive schedule, consistent with Exhibit C, of the performance of the Architect/Engineer's services and those of any subconsultants, separate consultants or subcontractors retained, employed or contracted by Architect/Engineer ("Architect/Engineer's Consultants"). This schedule shall indicate dates of (or, where applicable, periods of elapsed time allowed for) Owner approvals, dates when specific information is required by the Architect/Engineer from the Owner, and anticipated approval periods required for public authorities having jurisdiction over the project. Once submitted by the Architect/Engineer, the Architect/Engineer and Architect/Engineer's Consultants will be bound by that schedule and will not deviate from it without prior written authorization by the Owner. Whether or not deviations from the schedule have been authorized by the Owner, the Architect/Engineer shall update this schedule as necessary to reflect Owner-approved changes or unavoidable deviations and to indicate the probable impact of those deviations on the performance of the Architect/Engineer's services and the Project. However, nothing in this subparagraph shall be construed as a waiver of the Owner's right to obtain full compliance by the Architect/Engineer to approved schedules.
6. **Ownership of Documents**. All plans, drawings, specifications, sketches, models, artwork, reports, or other tangible work product produced, originally developed, or submitted to Owner by Architect/Engineer pursuant to this Agreement (the "Original Work Product") is and shall remain the sole property of the Owner.

- A. Owner's Rights. The Owner shall have the right to use any and all Original Work Product. The Architect/Engineer shall maintain a set of reproducible record prints of the Original Work Product. If subsequent usage by the Owner shall require further evidence of sealing requirements, the Architect/Engineer shall make appropriate arrangements with the Owner for this purpose pursuant to paragraph 13.
  
- B. Delivery of Original Work Product. The Architect/Engineer shall deliver the Original Work Product to Owner upon final completion of the Project, unless, in the Owner's sole discretion, it is necessary for the Architect/Engineer to retain possession of the Original Work Product for a longer period of time. Upon early termination of the Architect/Engineer's services, the Architect/Engineer shall deliver all Original Work Product to the Owner, complete or incomplete, within ten (10) days of the effective date of the early termination.
  
- C. Copyrights. The Architect/Engineer hereby assigns to the Owner, without reservation, all copyrights to all project-related documents, models, computer drawings and other electronic expression, photographs, and other expression produced by the Architect/Engineer. Among those documents are design drawings and all drawings, specifications and other documents that are included in the Contract Documents. The Owner's obligation to pay the Architect/Engineer is expressly conditioned upon the Architect/Engineer's obtaining a valid written assignment of copyrights from Architect/Engineer's Consultants in terms identical to those that obligate the Architect/Engineer to the Owner as expressed in this subparagraph, which copyrights the Architect/Engineer hereby assigns to the Owner. The Owner, in turn, hereby grants to the Architect/Engineer a nonexclusive license to reproduce the documents for purposes relating directly to the Architect/Engineer's performance of the Project, for the Architect/Engineer's archival records, and for the Architect/Engineer's reproduction of drawings and photographs in the Architect/Engineer's marketing materials provided the contents of those materials, as to the Project, are approved by Owner after written request by the Architect/Engineer. No other project-related documents may be reproduced for any other purpose without the express written permission of the Owner. No other copyrights are included in this grant of nonexclusive license to the Architect/Engineer. This nonexclusive license shall terminate immediately upon the breach of this Agreement by the Architect/Engineer, or in the event Architect/Engineer ceases to do business, becomes or is declared insolvent or bankrupt, or makes an assignment for the benefit of its creditors..

- 7. Changes by the Owner. If the Owner changes any substantial aspect of the Scope of the Project which substantially changes the Project Construction Budget and/or Project Schedule, the fees and schedule contained in this Agreement may

be renegotiated in good faith.

8. **Term.** Unless this Agreement is terminated in accordance with Paragraph 17, it shall remain in effect from the date of this Agreement:

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

9. **Fees and Payment.**

- A. **Contract Sum.** Owner agrees to pay Architect/Engineer a fixed fee of \_\_\_\_\_ (the “Contract Sum”) for Basic Services. Fees for the specific phases of work shall be made in accordance with Exhibit D, Schedule of Progress Payments and Hourly Rates.
- B. **Additional Services.** Additional service will only be performed by written directive from the Owner (The School Board of Osceola County, Florida). The fees for Additional Services shall be established in accordance with the hourly rates described in Exhibit D. If any Additional Services are rendered or furnished by professional consultants retained by the Architect/Engineer and the Owner has reimbursed the Architect/Engineer for the actual reasonable amounts paid to the consultants, then the Architect/Engineer shall not be entitled to treat those services as Additional Services.
- C. **Progress Payments.** Progress Payments shall be made no more frequently than on a monthly basis, in accordance with the procedures identified in Article Exhibit G and the Local Government Prompt Payment Act (Fla. Stat. secs. 218.70 – 218.80)(the “LGPPA”).
- D. **Reimbursable Expenses.** The Owner shall pay the Architect/Engineer for certain reimbursable expenses (the “Reimbursable Expenses”) as set forth on Exhibit E. A not-to-exceed amount of \_\_\_\_\_ has been established for this item. The Architect/Engineer hereby waives all rights to payment by the Owner for otherwise Reimbursable Expenses when (a) the expense was incurred more than ninety (90) days before the date on which the Owner receives the first valid invoice from the Architect/Engineer

requesting payment for that expense; (b) the first invoice for that expense is not accompanied by detailed, credible, and legible documentation indicating the project-related nature of the expense; or (c) that evidence is produced in a form that is inconsistent with the form of the invoice.

- E. Final payment by Owner shall not be construed as acceptance of defective work or services.

10. **Architect/Engineer Representations and Warranties.** The Architect/Engineer hereby represents and warrants to the Owner the following:

- A. That the Architect/Engineer has not employed or retained any company or person, other than a bona fide employee working solely for the Architect/Engineer, to solicit or secure this Agreement and that the Architect/Engineer has not paid or agreed to pay any person, company, corporation, individual, or firm other than bonafide employees working solely for the Architect/Engineer, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or execution of this Agreement. If the Architect/Engineer breaches this provision, the Owner has the right to immediately terminate this Agreement without any liability to itself and, at its sole discretion, to deduct from the Contract Sum or otherwise recover the full amount of any such fee, commission, percentage, gift, or consideration.
- B. That Architect/Engineer, its Key Employees and Architect/Engineer's Consultants are properly licensed as required by the laws of the State of Florida to perform the professional services required for the Project.
- C. That Architect/Engineer shall provide professional services that reflect the highest standards of professional care.
- D. That the Contract Sum stated in paragraph 9.A. of this Agreement is adequate and sufficient consideration for the provision of all professional services (including those of Architect/Engineer's Consultants) necessary for the complete performance in providing the complete design of the Project whether or not those services are individually expressed in this Agreement, the only exceptions to this being (1) the cost of those services that are expressly designated as being the Owner's responsibility or are otherwise expressly designated as Owner provided and (2) the cost of those architectural, engineering or consulting services that become necessary as a result of a change in project scope affecting the Architect/Engineer and that are the subject of a written agreement between the Owner and the Architect/Engineer.

11. **Insurance.**

A. **Insurance Coverages.** Architect/Engineer, shall, through the performance of its services pursuant to this Agreement, maintain and provide evidence to the Owner of the following insurance coverages:

1. **Commercial General Liability** - The Architect/Engineer shall, during the Term of this Agreement, provide the School Board with evidence, including a Thirty (30) day written notice of cancellation, termination or non-renewal, of insurance prior to commencement of this Agreement. The coverage shall include broad form Commercial General Liability including premises & operations; products & completed operations; personal/advertising injury; fire damage (minimum \$100,000) and independent contractors; including the XCU hazards for limits of not less than \$1,000,000 per occurrence/\$2,000,000 aggregate per job, per policy year, relative to this project and will include the School Board as an Additional Insured. Further, the Architect/Engineer agrees to maintain like coverage for a minimum of Five (5) years following the completion of the project.
2. **Business Automobile** - The Architect/Engineer shall, during the Term of this Agreement, provide the School Board with evidence, including a Thirty (30) day written notice of cancellation, termination or non-renewal, of insurance prior to the commencement of this Agreement. The coverage shall include the Business Automobile Liability form with coverage for symbol I (any auto) and with limits of not less than \$1,000,000 combined single limit or \$500,000 per person/\$1,000,000 per accident bodily injury and \$1,000,000 per accident property damage. Also, the policy will include the School Board as an Additional Insured.
3. **Workers' Compensation/Employers Liability** - The Architect/Engineer shall, during the Term of this Agreement, provide the School Board with evidence, including a Thirty (30) day written notice of cancellation, termination or non-renewal, of insurance prior to commencement of this Agreement. The coverage shall include Statutory Workers' Compensation Benefits and Employers Liability for limits of not less than \$500,000.
4. **Professional Liability** - The Architect/Engineer shall, during the Term of this Agreement, provide the School Board with evidence of, including a Thirty (30) day written notice of cancellation, termination or non-renewal, insurance prior to commencement of this Agreement. The certificate shall provide Professional Liability insurance in the



amounts of \$1,000,000 per claim, with an aggregate total of \$2,000,000 for the policy period. The Architect further agrees to maintain like coverage for a minimum of Four (4) years following the latest date of the following: completion of this Agreement, completion of construction or issuance of a certificate of occupancy.

- B. Form of Insurance. All insurance required under this Agreement shall be with companies that are licensed in Florida and on forms which are acceptable to the Owner. The policies shall name the Owner, the Owner's representative, and the officers, directors, agents, employees, and assigns of the Owner as additional insureds (except for the professional liability and workers' compensation insurance). The coverage under all insurance required in this Agreement may not be reduced, terminated, or canceled unless thirty (30) days prior written notice is furnished to the Owner. In the event of any cancellation or reduction of insurance coverage, the Architect/Engineer shall obtain substitute coverage without any lapse of coverage.
- C. Insurer Qualifications. The insurance required under this Agreement shall be issued by companies that are licensed in Florida. The professional liability policy shall be underwritten by an insurer who, in the most current edition of Best's Key Rating Guide has a rating classification of A+, A, or A- and has a financial size category rating of Class 4 or higher.
- D. Proof of Insurance. The Architect/Engineer shall provide to the Owner, within ten (10) days of the date of this Agreement or prior to providing services, whichever is sooner, the following:
1. A certificate of insurance addressed to the Owner evidencing the existence of the insurance coverage required under this Agreement. The Owner must be listed as an additional insured on the certificate if required under this Agreement.
  2. The original policies evidencing the required insurance coverage, which owner shall copy and return to Architect/Engineer within seven (7) working days; and
  3. Proof which is acceptable to the Owner that the premium for the policies required under this Agreement has been paid in full by the Architect/Engineer for a period of time ending no earlier than six (6) months after the date of this Agreement.
- E. Payment of Premiums. The Architect/Engineer shall promptly renew and maintain in full force and effect all insurance coverages required under this Agreement. The Architect/Engineer shall pay all premiums becoming due on

the insurance policies, without request or demand. The Architect/Engineer shall promptly provide proof of premium payment to the Owner.

12. **Errors and Omissions.** The Architect/Engineer is responsible for any and all additional premium costs or expenses in connection with the construction of the Project or a delay in construction of the Project which is incurred, sustained, or paid by the Owner on account of or related to the following:
- A. Negligent errors or omissions made by the Architect/Engineer in the preparation of any plans, specifications, drawings or other documents made pursuant to this Agreement; and
  - B. Any and all negligent acts or omissions by the Architect/Engineer in the performance of any other services under this Agreement.

The Architect/Engineer shall pay the additional costs and expenses to the Owner as agreed upon by the Owner.

13. **Reuse and Repeated Design.** The Owner may reuse or repeat the Project, as designed by the Architect/Engineer under this Agreement at any time or times. The Architect/Engineer shall make all plans, specifications, designs, drawings, notes, and other documents available to the Owner to facilitate the reuse of the Project design.

Without requiring the Owner to pay additional fees, Design Professional consents to Owner's use of the plans, specifications, designs, drawings, notes, and other documents used by Design Professional under this agreement to complete the Project following Design Professional's termination for any reason or to perform additions to or remodeling of the Project. Additionally, Design Professional agrees to make available to Owner all plans, specifications, designs, drawings, notes, and other documents used by Design Professional under this agreement for reuse by Owner on repeat projects. For each reuse or repeat project, Owner agrees to pay Design Professional a fee according to the schedule of re-use fees below. If Owner engages Design Professional in multiple simultaneous re-use Owner agrees to pay design Professional a discounted fee per the schedule. Further, Owner and Design Professional will negotiate a fee for Design Professional to adapt plans, specifications, and other documents used in the project to any new site where the project documents are to be used. Additionally, Owner and Design Professional shall negotiate a fee for the Design Professional to provide bidding and construction phase services. Owner and Design Professional shall also negotiate a separate fee for any Owner requested changes or modifications or any revisions that are required due to building code or other regulatory changes.

Schedule of Re-use Fees:

Single Project	Simultaneous Multiple Projects

All subsequent Re-uses

14. **Indemnity and Hold Harmless.** The Architect/Engineer shall defend (if required by Owner), indemnify and hold Owner, Owner’s construction manager or other agents, professionals, or consultants retained for this Project, and the officers, directors, agents, employees, and assigns of each, harmless for and against any and all claims, demands, suits, judgments, damages to persons or property, injuries, losses, or expenses of any nature whatsoever (including attorneys’ fees at administrative, trial and appellate level) arising directly or indirectly from or out of any negligent act or omission of Architect/Engineer, its subconsultants, and their officers, directors, agents, or employees; any failure of Architect/Engineer to perform its services hereunder in accordance with generally accepted professional standards; any material breach of Architect/Engineer’s representations as set forth in this Agreement; or, any other failure of Architect/Engineer to comply with the obligations on its part to be performed hereunder. This hold harmless and indemnification is made notwithstanding the right of the Owner to reuse the plans and its ownership of, and rights to the Original Work Product. The provisions of this paragraph shall survive the expiration or termination, if sooner, of this Agreement. The Contract Sum includes \$100.00 to be paid by the Owner to the Contractor as specific consideration for the provisions contained in this Agreement and in the Contract Documents which provide for indemnity among the parties, as well as their related or affiliated companies, officers, directors, agents and employees. This amount shall be deemed to have been paid out of the first installment payable under this Agreement. This indemnity shall not apply if the design documents have been reused and released by another architect.
15. **Documents and Copies.** The Architect/Engineer shall provide the Owner with four (4) signed and sealed copies and one (1) set of computer files compatible with Osceola School District’s programs with the number of copies of all plans, specifications, drawings, the Project Manual, and other document as specified Exhibit “G”. These copies shall be made at the expense of the Architect/Engineer. If the Owner requires additional copies, the Architect/Engineer shall promptly furnish those copies to the Owner and the Owner shall pay the reasonable cost of reproduction.
16. **Expense Records.** The Architect/Engineer shall maintain its direct personnel expense records, consultant expense records, and other expense records which pertain to the Project, as well as its record of accounts between the Architect and the Owner which pertain to the Project. These records shall be kept in a generally recognized and acceptable accounting basis. The records shall be available to the Owner or its authorized representatives, during regular business hours for inspection

and copying. The Architect/Engineer shall maintain accurate time records, to within the nearest one half of an hour for each time entry for all work performed by the employees of the Architect/Engineer under this Agreement.

17. **Termination, Suspension, or Abandonment.**

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

- D. Payment. If the Project is suspended or terminated without cause, the Owner shall pay to the Architect/Engineer only the portion of the Contract Sum which has become due and payable. The remainder of the Contract Sum shall be canceled. Unless the Owner authorizes the Architect/Engineer in writing, the Architect/Engineer shall not perform any further services and shall not be entitled to receive payment from the Owner during a period of suspension.
18. No Assignment. This Agreement is for the personal services of the Architect/Engineer and it may not be assigned by the Architect/Engineer in any manner, whether by operation of law, or by any conveyance, including without limitation, transfer of stock in the Architect/Engineer firm, without the prior written consent of the Owner. The Owner may withhold its written consent in its sole discretion.
19. Governing Law and Venue. This Agreement shall be governed by and construed under the laws of the state of Florida. Osceola County, Florida shall be the proper place of venue for all suits to enforce this Agreement. Any legal proceedings arising out of or in connection with this Agreement shall be brought in the circuit courts of Osceola County, Florida. The parties consent to the jurisdiction of the court and to the service of process outside the state of Florida pursuant to the requirements of the court in any manner submitted to it. Notwithstanding any other provision in the Contract Documents, the Owner does not agree to arbitrate in any manner whatsoever any issue arising out of this Agreement or the Contract Documents. The Owner does not agree to pay attorneys' fees to the prevailing party in connection with a dispute arising out of this Agreement or the Contract Documents.
20. Dispute Resolution. Prior to initiating any litigation related to this Agreement, the parties agree to submit the dispute to nonbinding mediation by a mediator who is certified in Florida in an effort to resolve disputes in an expedient manner. Each party shall bear their own attorneys' fees and the costs incurred by such mediation.
21. Subconsultants, Separate Consultants, or Subcontractors. If the Architect/Engineer desires to employ subconsultants, separate consultants, or subcontractors in connection with the performance of its services under this Agreement, it agrees to comply with the following:
- A. Owner Approval. The Architect/Engineer shall submit any subconsultants, separate consultants, or subcontractors to the Owner for prior written approval. The Owner has the sole discretion to withhold its approval. The Owner shall not be liable to the Architect/Engineer in any manner whatsoever arising out of the Owner's objection to a proposed subconsultant, separate consultant, or subcontractor.

- B. Architect/Engineer Responsibilities. The Architect/Engineer shall coordinate the work product of any subconsultant, separate consultant, or subcontractor and shall remain fully responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Architect/Engineer or its subconsultants, separate consultants, or subcontractors. The Architect/Engineer shall review or approve designs, drawings, specifications, shop drawings, submittals, or other items produce or furnished by any subconsultant, separate consultant, or subcontractor prior to submittal to the Owner. The Architect/Engineer shall correct or revise any errors or deficiencies it sees in documents or services provided pursuant to this Agreement and shall provide the Owner with corrected documents at the Architect/Engineer's sole cost and expense.
- C. Subconsultant, Separate Consultant, or Subcontractor Responsibilities. Any agreements between the Architect/Engineer and a subconsultant, separate consultant, or subcontractor for work on the Project shall reflect the terms of this Agreement. To the extent the services are to be performed by the subconsultant, separate consultant, or subcontractor, that third party shall assume the obligations of the Architect/Engineer towards the Owner. The Architect/Engineer acknowledges that this does not relieve the Architect/Engineer from any of its duties under this Agreement.
22. Owner Consultants. The Architect/Engineer shall cooperate at all times with the Owner and shall cooperate and coordinate with any separate consultant or agent hired by the Owner. The Architect/Engineer shall incorporate the work product of any Owner consultant in a manner which is appropriate to facilitate the design and construction of the Project within the Project Construction Budget and Project Schedule.
23. Key Employees. The Owner has relied upon and hired the Architect/Engineer because of the involvement of certain individuals employed by the Architect/Engineer who are identified on Exhibit F (the "Key Employees"). The Architect/Engineer agrees that the Key Employees shall be assigned to the Project. The Architect/Engineer shall not remove any Key Employee from the Project without the prior written consent of the Owner, for any reason other than termination of the Key Employee's employment by the Architect/Engineer.
24. Consultants' Competitive Negotiation Act. If the total fee paid to the Architect/Engineer exceeds the threshold amount provided in Section 287.017, for CATEGORY FOUR the following provisions of the Consultants' Competitive Negotiation Act, section 287.055(5) (a), Florida Statutes apply:
- A. The Architect/Engineer shall execute and furnish to the Owner a "Truth-in-Negotiation Certificate," stating the wage rates and other factual unit costs

supporting compensation are accurate, complete, and current at the time of executing this Agreement.

- B. The “Truth-in-Negotiation Certificate” form is attached to this Agreement as Exhibit H.
  - C. The Contract Sum and any additions thereto shall be adjusted to exclude any significant sums when the Owner determines the Contract Sum was increased due to inaccurate, incomplete, or non-current wage rates and other factual costs.
25. **Gender.** Unless the context clearly indicates to the contrary, words singular or plural in number shall be deemed to include the other, and pronouns having a neuter, masculine, or feminine gender shall be deemed to include the others.
26. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the matters covered by this Agreement. All prior negotiations, representations, and agreements not incorporated in this Agreement are canceled. This Agreement can be modified or amended only by a written document duly executed by the parties or their duly appointed representatives.
27. **Right to Enter this Agreement.** Each party warrants and represents, with respect to itself, that neither the execution of this Agreement nor the performance of its obligations under this Agreement, shall violate any legal requirement, result in or constitute a breach or default under any indenture, contract, or other commitment or restriction to which it is a party or by which it is bound. Each party also warrants and represents, with respect to itself, that the execution of this Agreement and the performance of its obligations under this Agreement shall not require any consent, vote, or approval which has not been obtained, or at the appropriate time shall not have been given or obtained. Each party agrees that it has or will continue to have throughout the term of this Agreement the full right and authority to enter into this Agreement and to perform its obligations under this Agreement. Upon written request, each party agrees to supply the other parties with evidence of its full right and authority.
28. **Binding Effect.** Each and all of the covenants, terms, provisions, and agreements contained in this Agreement shall be binding upon and inure to the benefit of the parties and their respective assigns, successors, subsidiaries, affiliates, holding companies and legal representatives, as allowed in this Agreement.
29. **Notices.** All notices shall be in writing, and may be served by (a) depositing the same in the United States mail addressed to the party to be notified, postpaid, and registered or certified with return receipt requested, (b) by delivering the same in person to such party, (i) personal delivery, or (ii) overnight courier, or (c) by

facsimile transmission provided that a copy is sent on the same day, by 5 p.m., by either of the methods described in (a) or (b). Notice deposited in the mail shall be deemed to have been given on the third day next following the date postmarked on the envelope containing such notice, or when actually received, whichever is earlier. Notice given in any manner shall be effective only if and when received by the party to be notified. All notices to be given to the parties shall be sent to or delivered at the addresses or facsimile numbers set forth below:

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

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

30. **Waiver**. No consent or waiver, express or implied, by either party to this Agreement to or of any breach or default by another in the performance of any obligations shall be deemed or construed to be consent or waiver to or of any other breach or default by that party. Except as otherwise provided in this Agreement, failure on the part of any party to complain of any act or failure to act by another party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver of the rights of that party.
31. **Captions**. The captions used for the Sections in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or the intent of this Agreement or any Article or Section hereof.
32. **Severability**. In the event any of the provisions of this Agreement are determined by a court of competent jurisdiction to be illegal or unenforceable, then such unenforceable or unlawful provision shall be excised from this Agreement, and the remainder of this Agreement shall continue in full force and effect. Notwithstanding



the foregoing, if the result of the deletion of such provision shall materially and adversely affect the rights of a party, such party may elect, at its option, to terminate this Agreement in its entirety.

33. **Cumulative Remedies.** All rights, powers, remedies, benefits, and privileges available under any provision of this Agreement to any party is in addition to and cumulative of any and all rights, powers, remedies, benefits, and privileges available to such party under all other provisions of this Agreement, at law or in equity.
34. **Approvals.** Whenever any review or approval is required by any party, such party agrees that such review or approval shall be promptly and expeditiously prosecuted to conclusion.
35. **Further Assurances.** The parties agree to execute any and all further instruments and documents, and take all such action as may be reasonably required by any party to effectuate the terms and provisions of this Agreement and the transactions contemplated in this Agreement.
36. **No Partnership or Joint Venture.** It is understood and agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture between the School Board and Architect/Engineer or any other party, or cause either party to be responsible in any way for the debts and obligations of the other party.
37. **Third Party.** Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.
38. **No Construction Against Drafter.** Each of the parties has been represented by legal counsel who have had ample opportunity to, and have, participated in the drafting of this Agreement. Therefore, this Agreement shall not be construed more favorably or unfavorably against any party.
39. **Public Entity Crime Information Statement and Debarment.**—Section 287.133(2)(a) of the Florida Statutes states; “A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.”

Architect/Engineer represents that it is not on the convicted vendor list and, in addition to any other requirement of law, shall notify School Board within 30 days after it has been convicted of a public entity crime. Architect/Engineer hereby represents and warrants that has not been excluded from receiving federal contracts, and does not appear on the Excluded Parties List System, as defined in 48 CRF 9.404, and has not been suspended or debarred as defined in each federal agency's codification of the Common Rule for Nonprocurement suspension and debarment, and that it shall notify School Board within 30 days after it has been debarred or suspended by a debarring or suspending official, as the case may be.

40. **Background Check.** The Architect/Engineer agrees to comply with all requirements of sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, shall successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by the School Board in advance of the Architect/Engineer or its personnel providing any services under the conditions described in the previous sentence. The Architect/Engineer shall bear the cost of acquiring the background screening required by section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to the Architect/Engineer and its personnel. The parties agree that the failure of the Architect/Engineer to perform any of the duties described in this section shall constitute a material breach of this agreement entitling the School Board to terminate immediately with no further responsibilities or duties to perform under this agreement. The Architect/Engineer agrees to indemnify and hold harmless the School Board, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from Architect/Engineer's failure to comply with requirements of this section or with sections 1012.32 and 1012.465, Florida Statutes. Architect/Engineer shall require each of Architect/Engineer's Consultants on the project to agree, in writing, to the provisions of this paragraph.
41. **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable.
42. **Non-Discrimination.** The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this agreement because of race, color, religion, gender, age, marital status, disability, political or religious beliefs, national or ethnic origin.
43. **Access to Documentation.** Architect/Engineer shall, concurrently with performance of its services, prepare substantiating records regarding services rendered, and shall retain in its records copies of all written communications, and any memoranda of

verbal communications, related to the Project. The School Board, the Federal grantor agency (if federal grant moneys use in whole or in part), the Comptroller General of the United States (if federal grant moneys used in whole or in part), the Auditor General, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of Architect/Engineer which are directly pertinent to work and services to be performed under this agreement for the purpose of audit, examination, excerpting and transcribing. Upon seven calendar days' written notice, from the date first above written to the latest date described in paragraph 44 below, Architect/Engineer shall make its records available during normal business hours to the School Board or any of the entities mentioned in the first sentence of this paragraph. Such entities shall be entitled to inspect, examine, review and copy the records within adequate work space at the Architect/Engineer's facilities. Without limitation and not in derogation of any other provision of law, failure of Architect/Engineer to supply substantiating records shall be reason to exclude the related costs from amounts which might otherwise be payable by School Board to Architect/Engineer pursuant to this Agreement.

**44. Retention of Documentation.** Architect/Engineer shall retain all such records as described in paragraph 43 above, and records required under any state or federal rules, regulations or laws respecting audit, for a period of four years after the School Board has made final payment and all services have been performed under this agreement.

**45. Compliance with Federal Grant Requirements.** If made applicable by the use of federal grant funds in the Project or any other requirement as set out below, Architect/Engineer shall comply with the following enactments, rules, regulations and orders:

Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees).

Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR part 3).

Davis-Bacon Act (40 U.S.C. 3141 et seq.) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation).

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 701 et seq.) as supplemented by Department of Labor regulations

(29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers).

All applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 7606), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

IN WITNESS WHEREOF, the parties hereto have hereunto caused these presents to be executed as of the day and year first above written.

**ARCHITECT/ENGINEER**

Attest:  
\_\_\_\_\_  
(Name, Title and Corporate Seal)

Date: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**OWNER**

THE SCHOOL BOARD OF OSCEOLA  
COUNTY, FLORIDA

Attest:  
\_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_