



AIA® Document B101® – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the ____ day of June in the year 2024
(In words, indicate day, month and year.)

BETWEEN the Engineer’s client identified as the Owner or Library:
(Name, legal status, address and other information)

Orange County Library District
101 East Central Blvd
Orlando, Florida 32801
Attn: Kristopher Shoemaker
407-325-4230 (c)
407-835-7650 (fax)
407-835-7314 (o)
shoemaker.kristopher@ocls.info

and the Engineer:
(Name, legal status, address and other information)

tbd

for the following Project:
(Name, location and detailed description)

**Continuing Mechanical, Electrical, Plumbing, Fire Protection, and Structural,
Professional Engineering Design Services**
for various Owner Projects as assigned and agreed upon by individual Task
Authorizations.

The Owner and Engineer agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Owner issued a Request for Qualifications pursuant to Florida Statute Section 287.055 to contract with multiple engineering firms under continuing services contracts as defined therein. Engineer agrees to provide professional services to Owner for Projects as determined by and selected by Owner, upon terms and conditions set forth herein and upon mutual agreement and execution of Task Authorizations for each Project. Each Task Authorization for each Project, upon execution, shall automatically be incorporated fully herein in this Agreement. All the terms and conditions of this Agreement shall fully apply to each Task Authorization. Each Project budget for each Task Authorization will vary and will be stated in each Task Authorization. Engineer recognizes that this Agreement is not exclusive, and that Owner has and/or may contract with more than one engineering firm under the terms of similar continuing contracts and will equitably rotate and divide the Projects based upon Owner's current volume of work assigned, the dollar value of work assigned, the particular specialties of the engineers and their sub-consultants, and the ability of the engineers to perform the services within Owner's needed schedule and other requirements.

The Scope of Services are generally described in Exhibit A.

The ability to perform a Task Authorization for each Project under this Agreement is limited by F.S. 287.055. If the Task Authorization is related to a Project that exceeds \$4.0 million in estimated construction costs (regardless of the

amount of Engineer's fees), or if the Engineer's fee is for a study task that exceeds \$500,000, then those services will be advertised and procured separately under F.S. 287.055 and not performed under this or any other continuing services contract.

If a Task Authorization includes as an attachment a proposal from Engineer, only the scope of services portions of such proposal shall be part of the Task Authorization and any terms and conditions included in such proposal shall not be part of the Task Authorization or this Agreement and such proposal terms and conditions shall be considered null and void.

Owner retains the right to reduce the scope of any portion of the Scope of Services of any Task Authorization. In such event, Owner shall be entitled to proportionally reduce the Engineer's compensation.

Engineer has represented, upon which Owner has relied, that Engineer is properly qualified, licensed, and competent to perform such professional services.

Engineer recognizes that this Agreement is not exclusive, and that Owner has and/or may contract with more than one engineering firm under the terms of similar continuing contracts, and Engineer does not object.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

see Task Authorizations

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

see Task Authorizations

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

see Task Authorizations

.2 Construction commencement date:

see Task Authorizations

.3 Substantial Completion date or dates:

see Task Authorizations

.4 Other milestone dates:

see Task Authorizations

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:

(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

see Task Authorizations

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

see Task Authorizations

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Engineer shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner’s Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Engineer shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

see Task Authorizations

§ 1.1.8 The persons or entities, in addition to the Owner’s representative, who are required to review the Engineer’s submittals to the Owner are as follows:
(List name, address, and other contact information.)

see Task Authorizations

§ 1.1.9 The Owner shall retain the following consultants and contractors: see Task Authorizations
(List name, legal status, address, and other contact information.)
(Paragraphs deleted)

§ 1.1.10 The Engineer identifies the following representative in accordance with Section 2.3:
(List name, address, and other contact information.)

see Task Authorizations

§ 1.1.11 The Engineer shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:
(Paragraphs deleted)
see Task Authorizations

§ 1.1.11.2 Consultants retained under Supplemental Services:
see Task Authorizations

§ 1.1.12 Other Initial Information on which the Agreement is based:
see Task Authorizations

§ 1.2 The Owner and Engineer may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Engineer shall appropriately adjust the Engineer’s services, schedule for the Engineer’s services, and the Engineer’s compensation. The Owner shall adjust the Owner’s budget for the Cost of the Work and the Owner’s anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

(Paragraphs deleted)

ARTICLE 2 ENGINEER’S RESPONSIBILITIES

§ 2.1 The Engineer shall provide professional services as set forth in the Task Authorizations subject to the terms and conditions of this Agreement. . The Engineer represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Engineer shall perform its services consistent with the professional skill and care ordinarily provided by engineers practicing in the same or similar locality under the same or similar circumstances. The Engineer shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Engineer shall, without additional compensation, correct and revise any errors or deficiencies in its designs, drawing, specifications and other services which are caused by the Engineer or its subconsultants.

§ 2.3 The Engineer shall identify a representative authorized to act on behalf of the Engineer with respect to the Project, which individual shall be subject to Owner's reasonable approval.

§ 2.4 Except with the Owner's knowledge and consent, the Engineer shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Engineer's professional judgment with respect to this Project.

§ 2.5 The Engineer shall maintain at its sole cost, the following insurance for the duration of this Agreement and for four (4) years after the substantial completion date of the construction of the last Project under any Task Authorization.

§ 2.5.1 Commercial General Liability with policy limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) for each occurrence and Two Million and 00/100 (\$2,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Engineer with policy limits of not less than One Million and 00/100 Dollars (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Engineer may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than One Million and 00/100 Dollars (\$ 1,000,000.00) each accident, One Million and 00/100 Dollars (\$ 1,000,000.00) each employee, and One Million and 00/100 Dollars (\$ 1,000,000.00) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million and 00/100 Dollars (\$ 2,000,000.00) per claim and Two Million and 00/100 (\$ 2,000,000.00) in the aggregate.

§ 2.5.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Engineer shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Engineer's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Engineer shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

§ 2.5.9 Engineer shall require its subconsultants to maintain a minimum of \$1,000,000 per occurrence for General Liability insurance, \$500,000 automobile liability insurance, statutory workers' compensation coverage, and \$1,000,000 per occurrence for Professional Liability Insurance.

§ 2.5.10 All insurance and all renewals thereof shall be issued by companies with a rating of at least "A-VIII" (or its equivalent successor) or better in the current edition of Best's Insurance Reports (or its equivalent successor or, if there is no equivalent successor rating, otherwise acceptable to Owner) and be licensed to do and be doing business in Florida. Any insurance which Engineer is required to maintain under this Agreement must include a provision that requires the insurance carrier to give Owner not less than thirty days written notice prior to any cancellation or modification of such coverage; if Engineer fails to deliver any insurance policy, certificate or renewal to Owner required under this Agreement, such failure shall be construed as a breach of this Agreement and Engineer will be prohibited from completing any work under this Agreement until the required coverage is re-instated.

ARTICLE 3 SCOPE OF ENGINEER'S BASIC SERVICES

§ 3.1 The Engineer's Basic Services consist of those described in this Article 3 and each Task Authorization. To the extent a Task Authorization includes Services listed in this Article 3, the descriptions of such Services in this Article 3 are included in the Services to be provided in the Task Authorization unless specifically stated as not included., and all such Services shall be performed in accordance with the terms and conditions of this Article 3 and this Agreement. If a Task Authorization includes as an attachment a proposal from Engineer, only the scope of services portions of such proposal shall be part of the Task Authorization and any terms and conditions included in such proposal shall not be part of the Task Authorization or this Agreement and shall be considered null and void. Services not set forth in this Article 3 or a Task Authorization are Supplemental or Additional Services.

§ 3.1.1 The Engineer shall manage the Engineer's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Engineer shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Engineer shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Engineer shall provide prompt written notice to the Owner if the Engineer becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Engineer shall submit for the Owner's approval a schedule for the performance of the Engineer's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Engineer or Owner. With the Owner's approval, the Engineer shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction. The approved schedule for Engineer's services will be stated in each Task Authorization.

§ 3.1.4 The Engineer shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Engineer's written approval.

§ 3.1.5 The Engineer shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Engineer shall respond to applicable design requirements imposed by those authorities and entities. The Engineer shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Engineer shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services. The Engineer shall investigate accessibility requirements applicable in the jurisdiction in which the Project is located.

§ 3.1.6 The Engineer shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.7 Reduction in Scope of Services. Owner retains the right to reduce the scope of any portion of the Services. In such event, Owner shall be entitled to proportionally reduce the Engineer's compensation.

§ 3.1.8 After completion of each of the below phases of the design Services, Engineer shall not perform any services whatsoever for the next design phase until receiving Owner's written approval of the deliverables for the prior design phase.

§ 3.1.9 Substitution of the Project Manager, Project Engineer, or Other Key Personnel: Engineer shall not substitute any key personnel without the prior written approval of the Owner's Chief Financial Officer. Any such requests shall be supported by comprehensive documentation outlining the reason(s) for the proposed substitution to include the specific qualifications of the proposed substitute. Approval of the request shall be at the discretion of the Owner. Further, Owner, in lieu of approving a substitution, may initiate other actions under the contract, including termination.

§ 3.2 Schematic Design Phase Services if included in a Task Authorization

§ 3.2.1 The Engineer shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Engineer's services and shall assist the Owner in submitting applications for entitlements for development to authorities having jurisdiction.

§ 3.2.2 The Engineer shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Engineer shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Engineer shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Engineer shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Engineer shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Engineer shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Engineer shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Engineer shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Engineer shall review and comment on any estimate of the Cost of the Work prepared by the Construction Manager for this phase. The Engineer shall meet with the Owner and the Owner's Construction Manager to discuss revisions, if any, required in the Owner's program in order to develop the Project within the parameters of the Owner's budget. The Engineer shall discuss the proposed development of the Project with consultants retained by the Owner. If a Task Authorization provides that Engineer is to perform cost estimating services, Engineer shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Engineer shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services if included in a Task Authorization

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Engineer shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe

the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to plumbing, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Engineer shall review and comment on any estimate of the Cost of the Work prepared by the Construction Manager for this phase. The Engineer shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Engineer shall submit the Design Development Documents to the Owner and Owner's Construction Manager, take any action required under Article 6, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services if included in a Task Authorization

§ 3.4.1 Based on the Owner's written approval of the Design Development Documents, and on the Owner's written authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Engineer shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Engineer acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Engineer shall review in accordance with Section 3.6.4.

§ 3.4.2 The Engineer shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Engineer shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal 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 Engineer 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.

§ 3.4.4 The Engineer shall review and comment on any estimate of the Cost of the Work prepared by the Construction Manager for this phase and update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Engineer shall submit the Construction Documents to the Owner and Owner's Construction Manager, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval. Engineer shall provide signed and sealed sets of construction documents in both paper and CADD formats.

§ 3.5 Procurement Phase Services if included in a Task Authorization

§ 3.5.1 CONSTRUCTION MANAGER SELECTION

Following the Owner's approval of the Construction Documents, the Engineer shall assist the Owner in (1) obtaining either competitive bids or negotiated GMP proposals from the Construction Manager or Contractors; (2) reviewing the responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) reviewing contracts for construction. The Engineer shall issue addenda as necessary to interpret and clarify matters concerning the Construction Documents. The Engineer shall also attend pre-bid conferences and meetings as requested by the Owner or Construction Manager.

§ 3.5.2 SUBCONTRACTOR Competitive Bidding OR PROPOSALS

§ 3.5.2.1 Bidding Documents shall consist of bidding or proposal requirements, as applicable and proposed Contract Documents.

§ 3.5.2.2 The Engineer shall assist the Owner and Construction Manager during the subcontractor bidding, proposal, and selection process (the Construction Manager shall be responsible for conducting and managing the subcontractor selection process) by:

- .1 procuring the reproduction of Bidding Documents to be provided to the Construction Manager for distribution to prospective subcontractors by the Construction Manager;
- .2 attending a pre-bid or proposal conference for prospective subcontractors;
- .3 preparing responses to questions forwarded from the Construction Manager on behalf of prospective subcontractors and providing clarifications and interpretations of the Bidding Documents to the Construction Manager in the form of addenda; Construction Manger shall be responsible to distribute such addenda to its prospective subcontractors.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Engineer shall, as part of Basic Services, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to the Construction Manager which will distribute same to all prospective subcontractors.

§ 3.5.3 n/a.

(Paragraphs deleted)

§ 3.5.4 After bids and/or negotiated proposals are received for the Work, Engineer shall perform design revisions and any and all other services required to bring the construction costs of the Work within the Owner's budget in accordance with Article 6. These design revisions and services by Engineer shall be performed as part of Basic Services at no increase in the Fee and without any additional compensation to be paid under this Agreement.

§ 3.6 Construction Phase Services if included in a Task Authorization

§ 3.6.1 General

§ 3.6.1.1 The Engineer shall provide administration of the Contract between the Owner and the Contractor as set forth below and in the OCLD Revised AIA Document A201™–2017, General Conditions of the Contract for Construction, which Engineer has been provided a copy.

§ 3.6.1.2 The Engineer shall advise and consult with the Owner during the Construction Phase Services. The Engineer shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Engineer shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Engineer be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Engineer shall be responsible for the Engineer's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Engineer's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Engineer issues the final Certificate for Payment and Owner has approved Final Completion.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Engineer shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Engineer shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. However, the Owner agrees that Engineer is not responsible for the construction processes, means, methods, sequences, techniques or procedures; accuracy and completeness of other information such as dimensions and quantities or assembly of an approved item, which are the Contractor's sole responsibility; safety precautions; quality, installation or performance of equipment or systems; or Contractor's, any subcontractor's, any engineer's, or any consultant's failure to perform the Work in accordance with the Contract requirements.

§ 3.6.2.2 The Engineer with Owner approval, has the authority to reject Work that does not conform to the Contract Documents. Whenever the Engineer considers it necessary or advisable, the Engineer shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Engineer to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Engineer shall interpret matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. Such interpretations will not be binding on the Owner. The Engineer's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations of the Engineer shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations, the Engineer shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in OCLD Revised AIA Document A201-2017, the Engineer shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§3.6.2.6 As part of Basic Services, the Engineer shall be responsible to review and approve any and all proposals by any Contractor or the Owner's Representative for alternates, substitutions or value engineering changes (VECP). All such review and approvals shall be promptly conducted in order not to impact the progress of the Work and will be completed within thirty (30) days of receipt of such proposal. The Engineer shall not approve any proposed alternate, substitution, or VECP without first obtaining the approval of the Owner. Once the Engineer approves a proposed alternate, substitution or VECP, the Engineer will take responsibility for such alternate, substitution, or VECP in the same manner and to the same extent as if such substitution, alternate or VECP had been a part of the Engineer's original Construction Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Engineer shall review and certify the amounts due the Construction Manager and recommend approval or disapproval of the Construction Manager's Applications for Payment. Such payment approvals shall be subject to Owner's approval. If approved, Engineer shall issue certificates in such amounts within 5 days of Engineer's receipt of Contractor's Application for Payment. The Engineer's approval and certification for payment shall constitute a representation to the Owner, based on the Engineer's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Engineer's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Engineer.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Engineer has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Engineer shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Engineer shall review the Contractor's submittal schedule within ten (10) calendar days and shall not unreasonably delay or withhold approval of the schedule. The Engineer's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Engineer's professional judgment, to permit adequate review.

§ 3.6.4.2 The Engineer shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Engineer's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Engineer shall specify the appropriate performance and design criteria that such services must satisfy. The Engineer shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Engineer. The Engineer's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Engineer shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Engineer shall review and respond to requests for information about the Contract Documents. The Engineer shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Engineer's response to such requests shall be made in writing within five (5) business days during the Design Phase and within four (4) business days during the Construction Phase. . If appropriate, in a reasonable timely manner, the Engineer shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Engineer shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Engineer, but only with prior Owner approval, may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Engineer shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Engineer shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Engineer shall:

- .1 conduct inspections with representatives of the Owner, to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor;
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Engineer's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents; (All certificates of Substantial Completion or Final Completion by the Engineer shall be subject to the Owner's right to reject such certificates); and

.5 as part of its Basic Services, Engineer shall provide a record set of drawings to Owner within sixty (60) days of obtaining a Certificate of Occupancy.

§ 3.6.6.2 The Engineer's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Engineer shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Engineer shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Engineer shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance and shall assist with warranty claims submitted to the Construction Manager.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental or Additional Services

§ 4.1.1

(Paragraphs deleted)

Compensation for Supplemental or Additional Services shall be negotiated by the Owner and Engineer at the time of Owner's request for said services. Engineer shall not perform and shall not be entitled to any payment for such Supplemental or Additional Services unless the Owner and Engineer execute a written document setting forth a description of the Supplemental or Additional Services and the compensation to be paid for same in advance of Engineer performing such Supplemental or Additional Services.

(Table deleted)

(Paragraphs deleted)

§ 4.2 Engineer's Additional Services

The Engineer shall provide Additional Services after execution of this Agreement without invalidating the Agreement if specifically requested by Owner in writing. Except for services required due to the fault of the Engineer, any Additional Services provided in accordance with this Section 4.2 shall entitle the Engineer to compensation pursuant to Section 11.3 and an appropriate adjustment in the Engineer's schedule. Compensation for Additional Services shall be negotiated by the Owner and Engineer at the time of Owner's request for said services. Engineer shall not perform and shall not be entitled to any payment for such Additional Services unless the Owner and Engineer execute a written document setting forth a description of the Additional Services and the compensation to be paid for same in advance of Engineer performing such Additional Services.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Engineer shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Engineer shall not proceed to provide the following Additional Services until the Engineer receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

- .5 n/a;
- .6 Preparation of design and documentation of an unreasonable number of alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Engineer is party thereto;
- .9 n/a;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Engineer.

§ 4.2.2

(Paragraphs deleted)

n/a.

§ 4.2.3 The Engineer shall provide Construction Phase Services for each Task Authorization (unless otherwise stated in such Task Authorization) exceeding the limits set forth below as Additional Services. When the limits below are reached, the Engineer shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 weekly () visits to the site by the Engineer during construction
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion.

(Paragraph deleted)

§ 4.2.5 If the services covered by this Agreement have not been completed within Thirty Six (36) months of the date of the applicable Task Authorization, through no fault of the Engineer, extension of the Engineer's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Engineer. The Owner and the Engineer shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Engineer's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Engineer's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 n/a.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Engineer shall coordinate the services of the Owner’s consultants with those services provided by the Engineer. Upon the Engineer’s request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner’s consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Engineer in this Agreement, or authorize the Engineer to furnish them as an Additional Service, when the Engineer requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 n/a.

§ 5.11 The Owner shall provide prompt written notice to the Engineer if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Engineer’s Design Documents.

§ 5.12 Owner shall have the right to directly communicate with the Contractor and the Engineer’s consultants about matters arising out of or relating to the Contract Documents.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Engineer’s duties and responsibilities set forth in the Contract for Construction with the Engineer’s services set forth in this Agreement. The Owner shall provide the Engineer a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Engineer access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Engineer access to the Work wherever it is in preparation or progress.

(Paragraph deleted)

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Engineer and shall include contractors’ general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Engineer; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner’s budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner’s budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Engineer, represent the Engineer’s judgment as a design professional. It is recognized, however, that neither the Engineer nor the Owner has control over the cost of labor, materials, or equipment; the Contractor’s methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Engineer cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner’s budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Engineer.

§ 6.3 In preparing estimates of the Cost of Work, the Engineer shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Engineer's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques.

§ 6.4 If, through no fault of the Engineer, the Procurement Phase has not commenced within 90 days after the Engineer submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Engineer's or the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Engineer shall meet with the Owner and Construction Manager and make appropriate recommendations to the Owner to adjust the Project's design, size, quality, or budget for the Cost of the Work, the Owner and Engineer shall cooperate together in making such adjustments, and the Engineer shall make such revisions to the drawings of any phase at no extra charge to bring the estimated Cost of the Work within the Budget.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner may, at its sole option either, or in combination:

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Engineer, revise the Project program, scope, or quality as required to reduce the Cost of the Work;
- .5 direct the Engineer without additional compensation and without any additional expense to Owner, to revise the drawings and specifications in a manner acceptable to Owner so that the total estimated construction cost of the Work will not exceed the Owner's budget; and/or
- .6 implement any other mutually acceptable alternative.

§ 6.7 The Engineer shall comply with the above § 6.6 options selected without additional compensation and at no additional cost to the Owner. If the Owner chooses to proceed under Sections 6.6.1, 6.6.2, 6.6.4, or 6.6.5, the Engineer, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. Engineer's modification of the Construction Documents shall be the limit of the Engineer's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 Drawings, specifications, reports, and all other documents, including those in electronic form, prepared by the Engineer and the Engineer's consultants ("Design Documents") are the sole and exclusive property of the Owner, shall be considered as being specially ordered by Owner as "works made for hire" under 17 U.S.C. §101, and may be used in any manner at the sole discretion of Owner. Owner shall have full and sole ownership rights to the Design Documents, regardless of any payment disputes with Engineer. Engineer shall furnish Owner with such reproductions of any Design Documents as the Owner may request at any time in both electronic and printed form. Any reproductions shall be the sole and exclusive property of the Owner who may use them without Engineer's permission for any purpose determined to be proper by the Owner. Owner shall own all rights, copyrights, or other intellectual property there may be with respect to the Design Documents. In the event that the Design Documents are held not to be "works made for hire", then Engineer agrees that all Design Documents, whether in final form or draft, which result from any services performed by Engineer under this Agreement are hereby assigned exclusively to Owner, including any copyright, patent, trademark, and all other intellectual property rights. In all cases, Engineer further hereby expressly assigns all of its present and future rights therein to Owner, and agrees to execute and furnish, and to cause all the Engineer's consultants to execute and furnish, in favor of Owner separate assignment documents from time to time as requested by Owner. This Section shall survive any termination or expiration of this Agreement. The Engineer shall be entitled to retain copies of the Design Documents for the Engineer's use and records. Owner shall be free to use the Design documents for any purpose, including, but not limited to, completion, renovation, additions,

and expansion of the Project. The Engineer shall have no liability for the Owner's reuse of such documents for completion, renovation, or additions, or expansions to the Project. Engineer shall require language in each of its subconsultants' contracts providing for Owner's ownership of all Project documents and the Design Documents.

§ 7.2 The provisions of this Article 7 shall survive the termination of this Agreement.

(Paragraphs deleted)

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Engineer shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Engineer waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Engineer waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the OCLD Revised AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Engineer, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Engineer and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement. However, redesign costs and first cost remedial construction shall not be considered "consequential damages".

§ 8.2 DISPUTE RESOLUTION

(Paragraph deleted)

§ 8.2.1.1 Direct Negotiation, as defined herein, will be the initial process utilized by the parties to resolve claims and disputes. Either the Owner or the Engineer may make a request for Direct Negotiation as an initial attempt to resolve any claim, dispute, or other matter arising out of this Agreement. Direct Negotiation representatives of the parties shall be the Owner's Designated Representative, as notified by the Owner and the Engineer's Designated Representative as defined in in this Agreement. Direct Negotiation shall take place at the Project site or at a location as mutually agreed by the Owner and Engineer representatives. If the Direct Negotiation is successful, the resolution agreement shall be put in writing to be signed by both parties.

§ 8.2.1.2 If Direct Negotiation is not successful, any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Engineer's services, the Engineer may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Engineer shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be in accordance with Florida Statutes. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a State court of competent jurisdiction in the County where the Project is located.

Other: (Specify)
(Paragraphs deleted)

§ 8.3 The provisions of this Article 8 shall survive the termination of this Agreement.

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Engineer in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Engineer's option, cause for suspension of performance of services under this Agreement. If the Engineer elects to suspend services, the Engineer shall give seven (7) days' written notice to the Owner before suspending services. In the event of a suspension of services, the Engineer shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Engineer all sums due prior to suspension. The Engineer's fees for the remaining services and the time schedules shall be equitably adjusted only if the time in § 4.2.5 is exceeded.

§ 9.2 If the Owner suspends the Project, the Engineer shall be compensated for services performed prior to notice of such suspension. The Engineer's fees for the remaining services and the time schedules shall be equitably adjusted only if the time in § 4.2.5 is exceeded.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Engineer, the Engineer may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate or suspend this Agreement upon not less than seven (7) days' written notice to the Engineer for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates or suspends this Agreement for its convenience pursuant to Section 9.5, or the Engineer terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Engineer for services performed by Engineer and its subconsultants prior to termination and Reimbursable Expenses incurred which compensation shall be Engineer's sole and exclusive remedy for any termination or suspension. Engineer waives and releases Owner from any other claims or damages of any kind. Engineer expressly waives the right to bring against Owner any claim for damages for delay, acceleration, interference, extra work resulting from delay, extended overhead, wage escalation, overtime wage provisions, lost opportunity, or lost profit or financial impact on Engineer's other projects.

(Paragraphs deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.. Venue for any dispute shall be exclusively in the State Circuit Court of the County where the Project is located.

§ 10.2 Terms in this Agreement shall have the same definitions as those in the OCLD Revised AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Engineer, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Engineer shall assign this Agreement without the written

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consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Engineer by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Engineer to execute certificates, the proposed language of such certificates shall be submitted to the Engineer for review at least 14 days prior to the requested dates of execution. If the Owner requests the Engineer to execute consents reasonably required to facilitate assignment to a lender, the Engineer shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Engineer for review at least 14 days prior to execution. The Engineer shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Engineer.

§ 10.6 Unless otherwise required in this Agreement, the Engineer shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Engineer shall have the right to include photographic or artistic representations of the design of the Project among the Engineer's promotional and professional materials. The Engineer shall be given reasonable access to the completed Project to make such representations. However, the Engineer's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Engineer in writing of the specific information considered by the Owner to be confidential or proprietary. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Engineer or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Engineer's Basic Services described under Article 3, the Owner shall compensate the
(Paragraphs deleted)

Engineer as follows: To be negotiated and set forth in each Task Authorization based upon the hourly rates set forth in Exhibit B. The hourly rates set forth in Exhibit B shall be fixed for the first three years of this Agreement. Thereafter, if this Agreement is renewed or extended, the hourly rates shall be increased each year, by the CPI Ratio described below or 3%, whichever is less. "CPI Ratio" shall mean the ratio of the Consumer Price Index for the month prior to the applicable beginning month of the new year of the Term divided by the Consumer Price Index for April 2024. "Consumer Price Index" shall mean the index numbers of retail commodity prices designated "REVISED CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS - U.S. CITY AVERAGE - ALL ITEMS" (1967-100) prepared by the Bureau of Labor Statistics of the U.S. Department of Labor. Any publication by either the U.S. Department of Labor or the U.S. Department of Commerce in which such index numbers are published shall be admissible in evidence in any legal or judicial proceeding involving this Lease without further proof of authenticity.

In the event the U.S. Department of Labor ceases to prepare and to publish such retail commodity index numbers, the adjustment of rent thereafter shall be according to the most closely comparable commodity index published by the U.S. Department of Labor; and if such is not determined by that Department, then the most closely comparable commodity index as determined by agreement of the Parties; and in the absence of agreement, then as determined by a Circuit Judge of the Circuit Court of Orange County, Florida

§ 11.2

(Paragraphs deleted)

n/a.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Engineer as follows:

(Insert amount of, or basis for, compensation.)

Compensation for Additional Services shall be negotiated by the Owner and Engineer at the time of Owner's request for said Additional Services. Engineer shall not perform and shall not be entitled to any payment for such Additional Services unless the Owner and Engineer execute a written document setting forth a description of the Additional Services and the compensation to be paid for same in advance of Engineer performing such Additional Services. Before negotiating Additional Services, Engineer shall provide Owner with a list of personnel, proposed hourly rates, hours for each task, and itemization of proposed reimbursables for Owner's review. Subconsultants shall provide the same information on Subconsultant's letterhead for their Additional Services. The costs of any Additional Services performed without prior written authorization are waived by Engineer. The maximum hourly rates for Additional Services are attached as Exhibit "B".

§ 11.4 Compensation for Supplemental and Additional Services of the Engineer's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Engineer plus zero percent (0%), or as follows:

(Insert amount of, or basis for computing, Engineer's consultants' compensation for Supplemental or Additional Services.)

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

| | | | |
|----------------------------------|---|-----------|--------|
| Schematic Design Phase | Percentages to be determined at time of each Task Authorization | percent (| %) |
| Design Development Phase | | percent (| %) |
| 50% Construction Documents Phase | | percent (| %) |
| 100% Construction Documents | | percent (| %) |
| Procurement Phase | | percent (| %) |
| Construction Phase | | percent (| %) |
| Warranty Review Period | | percent (| %) |
| Total Basic Compensation | one hundred | percent (| 100 %) |

§ 11.6 n/a.

(Paragraph deleted)

§ 11.7 The

(Paragraphs deleted)

maximum hourly billing rates for Additional Services of the Engineer and the Engineer's consultants are set forth in Exhibit "B".

(Table deleted)

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include reasonable expenses incurred by the Engineer and the Engineer’s consultants directly related to the Project, as follows:

- .1 If advance approved by Owner, Transportation and authorized out-of-town travel and subsistence;
- .2 If advance approved by Owner, Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 If advance approved by Owner, Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance in writing by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested in advance in writing by the Owner;
- .8 If required by the Owner, and with the Owner’s prior written approval, the Engineer’s consultants’ expenses of additional insurance in excess of that required by this Agreement; and
- .9 All taxes levied on professional services and on reimbursable

(Paragraphs deleted)
expenses;

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Engineer and the Engineer’s consultants plus zero percent (0%) of the expenses incurred. However, the total of all Reimbursable Expenses incurred for Basic Services shall not exceed **the limit set forth in the applicable Task Authorization**. Any Reimbursable Expenses in excess of such amount necessary to perform Basic Services shall be paid by Engineer, unless approved in writing by Owner. Travel and per diem charges shall not exceed the limits as set forth in Section 112.061 Florida Statute.

§ 11.9

(Paragraphs deleted)
n/a.

§ 11.10 Payments to the Engineer

§ 11.10.1 Initial Payments

(Paragraphs deleted)

§ 11.10.1.1 An initial payment of zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner’s account in the final invoice.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Engineer’s invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Engineer.

(Insert rate of monthly or annual interest agreed upon.)

Interest shall be payable per Florida Statute Chapter 255.073(4).

§ 11.10.2.2 The Owner shall not withhold amounts from the Engineer’s compensation to impose a penalty or liquidated damages on the Engineer, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Engineer agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be provided to Owner at the time of billing for any such expenses or services.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

§ 12.1 PURSUANT TO FLORIDA STATUTES, SECTION 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT OF ARCHITECT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE IN ANY CLAIM(S) ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SERVICES PERFORMED IN THIS AGREEMENT, OR THE PROJECT.

12.2 The Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the architect to solicit or secure this agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement.

12.3 Whenever the term, "AIA Document A201–2017" is used in the Contract Documents, it shall refer to and mean the AIA A201-2017, OCLD Revised General Conditions of the Contract for Construction.

12.4 Whenever the term "Contractor" is used in the Contract Documents it shall refer to and mean "Construction Manager" or the "Contractor" as the case may be for the specific project.

12.5 Engineer shall preserve all contract records and documents for the entire term of this Agreement and for five (5) years after the later of: (i) the date of submission of Engineer's final services, or (ii) until all claims (if any) regarding the Agreement are resolved. During such period of time, Engineer shall retain and maintain all records and make such records available as may be requested by Owner. Owner may, at any time and for any reason whatsoever, review, audit, copy, examine and investigate in any manner, any records of Engineer which include, but are not limited to, papers, books, documents, vouchers, bills, invoices, requests for payment, accounting records, and other supporting documentation, which according to generally accepted accounting principles, procedures and practices, sufficiently and properly reflect all costs expended in the performance of this Agreement. Although owner may review all records, Owner's audit rights shall only apply to hourly services.

12.6 In the event Engineer or any of its subconsultants have presented a proposal to Owner which may contain terms and conditions other than a description of the scope of Services, such terms and conditions shall not be valid, shall not be enforceable, and shall not be considered a part of this Agreement or any Task Authorization, even if such proposal is attached to this Agreement. Only the description of the scope of Services to be performed shall be considered a part of this Agreement.

12.7 The Engineer shall indemnify and hold harmless the Owner from any and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the Engineer, its subconsultants of every tier, or its agents or employees in connection with providing the services called for in this Agreement.

12.8 **CADD.** The Engineer shall provide copies of the Design Documents to Owner prepared in 3D Revit, Sketchup, Autocad, or another CADD format as approved by Owner.

12.9 Engineer shall perform its services within the time periods set forth in each Task Authorization.

12.10 Sovereign Immunity. Owner's limits of liability are set forth in Section 768.28 of the Florida Statutes, and nothing herein shall be construed to extend the liabilities of Owner beyond that provided in Section 768.28 of the Florida Statutes. Nothing herein is intended as a waiver of Owner's sovereign immunity under Section 768.28 of the Florida Statutes or common law. Nothing hereby shall inure to the benefit of any third party for any purpose, including but not limited to anything which might allow claims otherwise barred by sovereign immunity or operation of law. Furthermore, all of Owner's obligations under this Agreement are limited to the payment of no more than the per person amount limitation and the aggregate contained in Section 768.28 of the Florida Statutes, even if the sovereign immunity limitations of that statute are not otherwise applicable to the matters as set forth herein.

In no event shall Owner be liable to Engineer for indirect, special, or consequential damages, including, but not limited to, loss of revenue, loss of profit, cost of capital, or loss of opportunity regardless of whether such liability arises out of contract, tort (including negligence), strict liability, or otherwise. Owner shall not assume any liability for the acts, omissions, or negligence of Engineer its agents, servants, employees, or subcontractors. In all instances, Engineer shall be responsible for any injury or property damage resulting from any activities conducted by Engineer.

12.11 There are no intended or unintended third party beneficiaries of this Agreement, and no parties other than the Owner and the Engineer shall have the right to enforce this Agreement. Engineer is and shall remain an independent contractor and not an employee or agent of Owner. This Agreement shall not be construed as a teaming, joint venture or other such arrangement. Nothing in this Agreement shall grant to either party the right to make commitments of any kind for or on behalf of the other party without the prior written consent of the other party.

12.12 Discrimination Prohibited. The Engineer and the Engineer's subconsultants shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Engineer shall take affirmative action to ensure that qualified applicants are employed if work is available, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Engineer agrees to post in places available to all employees and applicants for employment, notices setting forth the policies of nondiscrimination.

12.13 Prohibition against Contingent Fees. Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Engineer to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Engineer any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

12.14 Public Entity Crime. Engineer affirms that it is aware of the provisions of Section 287.133(2)(a), Florida Statutes, and that at no time has Engineer been convicted of a Public Entity Crime. Engineer agrees that it shall not violate such law and further acknowledges and agrees that any conviction during the term of this Agreement may result in termination of this Contract by Owner.

12.15 Public Records.

- a. To the extent Engineer is acting on behalf of Owner as provided under Subsection 119.011(2) of the Florida Statutes, Engineer shall:
 - i. Keep and maintain public records required by Owner to perform the services under this Agreement.
 - ii. Upon request from Owner's custodian of public records, provide Owner 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 costs provided in Chapter 119 of the Florida Statutes or otherwise provided by law.
 - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Engineer does not transfer the records to Owner.
 - iv. Upon completion of the Agreement, transfer, at no cost, to Owner all public records in possession of Engineer or keep and maintain public records required by Owner to perform the service. If the Engineer transfers all public records to Owner upon completion of the Agreement, the Engineer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Engineer keeps and maintains public records upon completion of the Agreement, the Engineer shall meet all applicable requirements for retaining public records. All

records stored electronically must be provided to Owner, upon request from Owner's custodian of public records, in a format that is compatible with the information technology systems of Owner.

- b. If the Engineer fails to provide the public records to Owner within a reasonable time the Engineer may be subject to penalties under Section 119.10 of the Florida Statutes. Further, Owner may exercise any remedies at law or in equity, including, without limitation, the right to (i) impose sanctions and assess financial consequences, (ii) withhold and/or reduce payment, and (iii) terminate this Agreement in accordance with the terms hereof.

Engineer shall defend, at its own cost, indemnify, and hold harmless Owner, their officers, directors, and employees from and against all claims, damages, losses, and expenses, (including but not limited to fees and charges of attorneys or other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from Engineer's failure to comply with the terms of this Section.

- c. **IF THE ENGINEER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ARCHITECT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT OWNER'S CUSTODIAN OF PUBLIC RECORDS, LOVEVIA WILLIAMS AT 101 E. CENTRAL BLVD. 5th FLOOR, ORLANDO, FLORIDA 32801, williams.lovevia@ocls.info 407-835-7628.**

12.16 Engineer shall not use any funds received pursuant to this Agreement for lobbying the Florida Legislature, the judicial branch, or any state agency.

12.17 Engineer shall coordinate and conduct with the Owner and Engineer a Project Warranty Inspection at the Project site on a mutually convenient date within the 14 day period before the expiration of the one (1) year warranty period.

12.18 All activities under or pursuant to this Agreement are subject to the availability of appropriated funds as approved by the Owner's Board. Owner shall immediately notify Engineer should funds become unavailable. In such case, either party shall have the right to stop work and/or terminate this Agreement.

12.19 Engineer is familiar with and shall comply with all applicable federal, state and local laws, rules, regulations, and requirements.

12.20 Engineer affirms that it is aware of the provisions of Section 287.134(2)(a), Florida Statutes. Engineer affirms it has not been placed on and Engineer shall not transact business with any entity that has been placed on the State's discriminatory vendor list.

12.21 Owner shall be entitled to make any decision, interpretation, or approval required by this Agreement to be made by Engineer. Any decision of Owner shall supersede any decision of the Engineer.

12.22 Engineer shall require language in each of its subconsultants' contracts providing for Owner's sole ownership of all Project and design documents as required by Article 7 of this Agreement.

12.23 Engineer shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management. Engineer shall insert a similar provision in accordance with this Section, in all subcontracts for this Project.

12.24 Engineer shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all employees hired by Engineer during the term of this Agreement; and Engineer shall expressly require any subcontractors to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all employees hired by the subcontractors during the contract term. The Department of Homeland Security's E-Verify system can be found at: http://www.dhs.gov/files/programs/gc_1185221678150.shtm

12.25 The employment by Engineer or any of its subconsultants of unauthorized aliens, as described by Section 274A(e) of the Immigration and Nationalization Act, shall be cause for termination of this Agreement.

12.26 Scrutinized Companies List.

a. By executing this Agreement, Engineer certifies that it is not: (1) listed on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725 of the Florida Statutes, (2) engaged in a boycott of Israel, (3) listed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473 of the Florida Statutes, or (4) engaged in business operations in Cuba or Syria. Pursuant to section 287.135(5) of the Florida Statutes, Owner may immediately terminate this Agreement for cause if the Engineer is found to have submitted a false certification as to the above or if the Engineer is placed on the Scrutinized Companies that Boycott Israel List, is engaged in a boycott of Israel, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria, during the term of the Agreement. If Owner determines that the Engineer has submitted a false certification, Owner will provide written notice to the Engineer. Unless the Engineer demonstrates in writing, within 90 calendar days of receipt of the notice, that Owner's determination of false certification was made in error, Owner shall bring a civil action against the Engineer. If Owner's determination is upheld, a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed on the Engineer, and the Engineer will be ineligible to bid on any Agreement with a Florida agency or local governmental entity for three years after the date of Owner's determination of false certification by the Engineer.

b. If federal law ceases to authorize the states to adopt and enforce the contracting prohibition in this Section, this Section shall be null and void without further action of the parties.

12.27 Engineer is encouraged to use Florida's minority and service-disabled veteran businesses as subconsultants under this Agreement. The Certified Vendor Directory can be accessed from the website of the Florida Department of Economic Opportunity of Management Services, Office of Supplier Diversity located at: https://www.dms.myflorida.com/agency_administration/office_of_supplier_diversity_osd

12.28 **COVID19.** Engineer's Fees includes all amounts necessary to comply with all regulations, ordinances, and laws concerning COVID19, including PPE, sanitation, and social distancing requirements.

12.29 **558 Opt Out.** The provisions of Florida Statute Chapter 558 are waived by both parties and shall not be applicable to this Agreement.

12.30 **Prohibited Gratuities.** Engineer shall not offer or give a gratuity (e.g., an entertainment or gift) to any officer, official, or employee of the Owner.

12.31 To be eligible for payment, Engineer's costs must be in compliance with all laws, rules and regulations, including, but not limited to, to the extent applicable, the Reference Guide for State Expenditures: http://www.myfloridacfo.com/aadir/reference_guide/.

12.32 Smoking and all tobacco products are prohibited on the Project site and prohibited anywhere on Owner's property. Tobacco is defined as tobacco products including, but not limited to, cigars, cigarettes, e-cigarettes, pipes, chewing tobacco and snuff. Failure to abide by this policy may result in civil penalties levied under Chapter 386, Florida Statutes and/or contract enforcement remedies.

12.33 **No Individual Liability.** No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any individual officer, agent, employee, or representative of the Owner, in his or her

individual capacity, and none of such persons shall be subject to any personal liability or accountability by reason of the execution of this Agreement, whether by virtue of any constitution, statute, or rule of law, or by the enforcement of any assessment or penalty, or otherwise. Further, Engineer waives and releases any and all claims of any kind against the individual officers, agents, employees, and representatives of the Owner.

12.34 Electronic Signatures. The parties agree that this Agreement and any amendments may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. For purposes of this Agreement "electronic signature" includes faxed versions of an original signature, electronically scanned and transmitted versions (via pdf) of an original signature, and portable document formats which include, but are not limited to, Abode or DocuSign.

12.35 Task Authorization Limits: The estimated construction cost for any Task Authorization issued under this Agreement shall not exceed **\$4,000,000.00**. Each Task Authorization shall specifically indicate the project's estimated construction cost. Task Authorizations issued under this Agreement for study activities shall not exceed **\$500,000.00**.

12.36 Term. The initial term of this Agreement shall be for three (3) years from the date first written above and may be extended upon mutual written agreement of both parties for two (2) additional one (1) year terms ("Term"). This Contract shall terminate at the expiration of the initial Term and at the end of each extension Term if not extended. In the event the Term of this Agreement expires and is not renewed, or is terminated as provided herein, if Engineer has not completed the services under a Task Authorization, then the Term of this Agreement will remain in effect through the date of completion of the services in the Task Authorization, but no new requests for proposals and no new Task Authorizations shall be issued.

12.37 Non-Exclusivity. Engineer agrees that this Agreement is not exclusive. This Agreement does not guarantee Engineer any right to enter into with Owner any Task Authorizations and does not guarantee any work, revenue or level of revenue will be provided to Engineer. Only if Owner and Engineer execute a Task Authorization and Engineer properly performs the Services will Engineer be entitled to any compensation. Engineer does not have exclusivity to perform architectural services for Owner. Owner has and may enter into other continuing services contracts and other contracts with other architectural firms to provide professional services to Owner.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Engineer and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Engineer.

§ 13.2 This Agreement is comprised of the following documents identified below:

.1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Engineer

.2 n/a.

.3 Exhibits:

(Check the appropriate box for any exhibits incorporated into this Agreement.)

AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this agreement.)

n/a

Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

(Paragraphs deleted)

EXHIBIT A – Scope of Services

EXHIBIT B - Engineer's Hourly Rate Schedule.

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User Notes:

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This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*

(Printed name and title)

ARCHITECT *(Signature)*

(Printed name, title, and license number, if required)



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Exhibit "A"
Scope of Services

MEP Engineer Continuing Services Contract

I. **SERVICES.** The SERVICE Tasks will be specified for each project and may include, but not necessarily be limited to the following types of SERVICES:

A. Mechanical Engineering Services

- (1) air-conditioning and heating systems (types)
- (2) air distribution (air handlers, ductwork & accessories)
- (3) refrigeration equipment (chillers, cooling towers)
- (4) unitary equipment (rooftop air-cooled single package units)
- (5) heat generation equipment (boilers)
- (6) fire protection equipment (fire sprinkler systems)
- (7) plumbing fixtures and equipment
- (8) HVAC instrumentation, Building Automation System, DDC Controls
- (9) Testing, adjusting and balancing of HVAC systems

B. Electrical Engineering SERVICES

- (1) power generation (emergency generators)
- (2) service and distribution (metering, grounding, service disconnects)
- (3) lighting (light fixtures, lamps), lighting control systems
- (4) communication systems (fire alarm & security systems)
- (5) electrical system testing
- (6) low-voltage distribution systems (switchboards, panels, controllers)

C. Plumbing Engineering Services

- (1) Retrofit of existing plumbing systems

D. Elevator Design Services

E. Smoke Control Design Services

F. Fire Alarm Design Services

G. Fire Sprinkler Design Services

H. Cost Estimating Services.

I. Construction Contract Administration Services.

II. **General Scope of Services:** The Scope of Services for each Task may include, but not limited to:

- A) **Problem Analysis:** Assist the LIBRARY in addressing and determining the cause and solution of problems with building systems and SERVICES to include building code violations, through survey, study, assessment, research and or structural analysis, which will include costs.
- B) **Project Programming:** Determine needs of the user department for use in establishing various project design concepts, parameters, criteria, code and or permit requirements and construction cost budgets.
- C) **Schematic Design:** Develop a single line drawing to show the conceptual layout, functional relationships to the building systems or SERVICES.
- D) **Design Development:** Develop schematic drawings into drawings and specifications that definitely indicate the layout, shows all physical improvements, items to be demolished, replaced or relocated, elevations and all dimensional requirements of the project, and sufficient detail to establish equipment, building materials, SERVICES or systems. Prepare project cost estimate for use in project budgeting and establishing the design construction cost budget amount.
- E) **Construction Documents:** Provide construction documents that fully describe all improvements and integrate all involved disciplines. These documents will be developed in successive stages of complexity until final completion. The document deliverables shall be at 30%, 60%, 90% and 100% completion. These documents deliverables shall be of sufficient detail and completeness to obtain all required permits and approvals from governing authorities, and obtain reasonable cost proposals from other contractors.
- F) **Technical Specifications:** Construction documents are composed of drawings and written specifications in the Construction specifications Institute (CSI) format. Technical Specification information shall not be placed on the drawings. Technical Specifications shall include all applicable sections of the Owner's Division 1 – General Requirements. Where brand names or manufacturers names are used, at least three shall be listed. Where three names cannot be listed, use the phrase "or acceptable equal".
- G) **Cost Estimating Services:** Provide a line item cost estimate at appropriate intervals such as 60% and 100% Construction Documents. Carefully note all assumptions and or exclusions. Clearly identify the materials, long-lead delivery items, overhead and profit and contingency allowance. Note whether the estimate is current or applies to a future date. The LIBRARY may obtain independent cost estimates separate from this Contract. If, in the LIBRARY's

opinion, there is a significant difference between the ENGINEER's estimate and the independent cost estimator, the ENGINEER shall be required to reconcile the estimate with the independent cost estimator.

- H) **Value Engineering:** Review project programs, schematic drawings, design development documents and construction documents prepared by the ENGINEER, or by others and provide recommendations for alternative designs, building systems, materials, equipment, etc., including cost estimates of alternatives that would reduce the anticipated construction cost without adversely impacting the functional or operational features and requirements of the project.
- I) **Code Compliance:** The ENGINEER shall be responsible to develop construction documents that are in compliance with all applicable building codes and other requirements of governing authorities. Nothing contained in information provided by the LIBRARY shall be interpreted as a deliberate violation of any code or other lawful requirement. The ENGINEER shall during the initial stage of design development physically inspect the areas of the building for code deficiencies that may affect the project cost and schedule. The ENGINEER shall provide in writing to the LIBRARY his findings on any building code deficiencies that may affect the project budget and schedule prior to development of construction documents. These findings should include costs and duration.
- J) **LIBRARY Approval:** All deliverables require approval before proceeding to the next level of development. Such approval will be issued by the LIBRARY in writing and may contain modifications to the contract documents that must be made prior to the next deliverable.
- K) **Reproductions:** Provide all required reproductions of documents for intermediate deliverables, permitting agencies and Contractor usage. For bidding purposes, the ENGINEER may use an allowance of Ten (10) sets of construction documents. These will be reimbursable costs. The LIBRARY will pay for all sets of documents required for bidding in excess of that amount. The ENGINEER shall provide to the LIBRARY CD-ROM's that include PDF files of final design plans and specifications.
- L) **Permits:** The ENGINEER shall prepare and submit applications, construction drawings and specifications, and related support documentation to all agencies having jurisdiction over the permitting or approval of the project. The ENGINEER shall pay all submittal, application and review fees required to process construction documents and obtain approval from agencies having jurisdiction over the project. Said application and review fees will be a reimbursable cost. This will be a contingency figure. Prepare written responses to and participate in the resolution of questions or issues during the review of the construction documents by any agency having jurisdiction for permitting or approval of the project. The LIBRARY shall pay all costs that are specifically designated as impact fees. The Contractor shall pay for the cost of obtaining the

building permit and other permits directly related to construction activities and inspections. Said permits and inspection fees will be a reimbursable cost.

M) **Bidding:** The ENGINEER shall prepare and submit the required number of drawings and specifications for inclusion with the LIBRARY's bidding documents for use by the LIBRARY in administering the bidding process. The ENGINEER will also provide the LIBRARY with one unbound set of technical specifications, and the required number of CD-ROM's that include the plans and technical specifications in PDF format. The ENGINEER will attend and participate in the pre-bid conference, answer questions from bidders, prepare addenda to the bidding documents and evaluate Contractor bid proposals. The LIBRARY shall advertise for bids, distribute bidding documents, maintain a log of bidders, conduct the pre-bid conference, receive and validate bid proposals, publish bidding results, and select a Contractor for award.

N) **Construction Contract Administration:** The ENGINEER shall assist the LIBRARY's project management personnel in ensuring that the contracted construction work is performed and completed in accordance with the requirements of the construction contract. The ENGINEER will be required to perform, but not limited to the following SERVICES:

- 1) **Pre-Construction Meeting:** Attend pre-construction meeting and answer questions from the Contractor and Sub-Contractors. Record meeting minutes and distributes to all attendees. The LIBRARY shall conduct the meeting, schedule the "Notice to Proceed" date and issue the "Notice to Proceed" letter to be signed by the Contractor.
- 2) **Construction Progress Meetings:** Attend regularly scheduled construction progress meetings during the course of construction. Answer questions and resolve construction issues. Record meeting minutes and distributes to all attendees. The LIBRARY shall conduct the meeting.
- 3) **Construction Observations** (separate from construction progress meetings): Conduct periodic construction observations to verify the quantity and quality of work. Each construction observation will include appropriate Sub-Engineers and be documented in a Construction Observation Report.
- 4) **Contractor Submittals and RFIs:** Review and process Contractor submittals and respond in writing to all Contractor RFIs. All approved Contractors submittals shall bear the ENGINEER's stamp and are delivered to the LIBRARY at Substantial Completion.
- 5) **Contractor's Application for Payment:** Review and approve all applications for payment. The ENGINEER shall recommend an appropriate value for the current stage of construction and sign the application for payment.

- 6) **Contractor Change Orders and Claims:** Review all Contractor Change Orders and Claims and recommend an appropriate value and course of action.
- 7) **Commissioning of Building Systems:** Review start-up and in-service procedures of building systems with Contractor and attend start-up of building systems. Record results of building system start-up. Submit in writing the results of the building system start-up to LIBRARY.
- 8) **Substantial Completion and Final Completion:** Attend the Substantial Completion Inspection and Final Completion Inspection. Arrange for all Sub-Consultants to attend and inspect their respective work. Assist the LIBRARY in verifying the completion of the Construction Contract, and preparing a punch list of items to be corrected by the Contractor. The ENGINEER shall provide a recommendation for Substantial Completion and Final Completion. The LIBRARY will provide the Certificate of Substantial Completion.
- 9) **Record Drawings:** Provide a minimum of two sets of record drawings full size and two half sizes and a CD-ROM of the record drawings and technical specifications prior to final completion inspection. The record drawings will be developed from the contractor's as-built drawings. Record drawings are part of the project closeout documents.
- 10) **Warranty Inspection:** Attend the one-year warranty inspection and assist the LIBRARY in identifying defective materials and or installation.
- 11) **Construction Management:** The LIBRARY may request the ENGINEER to manage a project under this contract during the construction phase. The ENGINEER will be under the direction of the LIBRARY's project management personnel and will be the LIBRARY's Project Representative. The ENGINEER may be assigned a project to manage under this contract after the LIBRARY has selected a contractor to perform and complete the work described in the contract documents. The SERVICES the ENGINEER will provide but not limited to, be the SERVICES listed under Item "N" - "Construction Contract Administration".
- 12) **Project Summary:** After completion of each project, the LIBRARY will request ENGINEER to prepare a "Lessons-learned Report" for each phase of the project that summarizes the strengths, weaknesses, pitfalls and provide ideas for improvements to future LIBRARY projects. This report should be reviewed and discussed with the LIBRARY prior to finalizing the report. It will become part of the project records.



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Exhibit "B"
Hourly Rates



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