

**STANDARD DESIGN PROFESSIONAL SERVICES AGREEMENT
(Construction Management Edition)**

BETWEEN

THE SCHOOL BOARD OF ORANGE COUNTY, FLORIDA

and

for

Project: _____

Contract No. _____

STANDARD DESIGN PROFESSIONAL SERVICES AGREEMENT
(Construction Management Edition)

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STANDARD DESIGN PROFESSIONAL SERVICES AGREEMENT
(Construction Management Edition)

THIS STANDARD DESIGN PROFESSIONAL SERVICES AGREEMENT (the “**AGREEMENT**”) is made and entered into by and between The School Board of Orange County, Florida, a body corporate existing under the laws of the State of Florida (hereinafter referred to as the “**OWNER**”), and _____, a _____, whose business address is _____ (hereinafter referred to as the “**DESIGN PROFESSIONAL**”).

W I T N E S E T H:

WHEREAS, OWNER desires to obtain the professional architectural and/or engineering services of DESIGN PROFESSIONAL concerning certain services for the design of the _____ Project (hereafter referred to as the “**Project**”) located at _____, said services being more fully described in Schedule A, “Scope of Services”, which is attached hereto and incorporated herein; and

WHEREAS, DESIGN PROFESSIONAL has submitted a proposal for provision of those services; and

WHEREAS, DESIGN PROFESSIONAL represents that it has expertise in the type of professional architectural and/or engineering services that will be required for the Project.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

ARTICLE 1 - DESIGN PROFESSIONAL’S RESPONSIBILITY

- 1.1 DESIGN PROFESSIONAL shall provide to OWNER professional architectural and/or engineering services in all phases of the Project to which this Agreement applies. All design services to be provided by DESIGN PROFESSIONAL pursuant to this Agreement shall be in conformance with the Scope of Services described in Schedule A (“Scope of Services”). Any deviation from the Scope of Services must be promptly brought to OWNER’s attention in writing by DESIGN PROFESSIONAL and all such deviations must be expressly approved by OWNER in advance in writing. The Basic Services (as defined in Section 1.2) and any authorized Additional Services (as determined in accordance with Article 2) required of DESIGN PROFESSIONAL are referred to collectively at times as “Services.”
- 1.2 The basic services to be performed by DESIGN PROFESSIONAL hereunder are set forth in the Scope of Services and include such other and further services as are normally and customarily provided by a design professional in the ordinary course of business as a part

of such basic services, even if not specifically identified in the Scope of Services (collectively, the “**Basic Services**”). The total compensation to be paid DESIGN PROFESSIONAL by OWNER for all Basic Services is set forth in Article 5 and Schedule B.

- 1.3 DESIGN PROFESSIONAL agrees to obtain and maintain throughout the period of this Agreement all such licenses as are required to do business in the State of Florida and in Orange County, Florida, including all licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the professional services to be provided and performed by DESIGN PROFESSIONAL pursuant to this Agreement.
- 1.4 DESIGN PROFESSIONAL agrees that, when the Services to be provided hereunder relate to a professional service which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such Services, it shall employ and/or retain only qualified personnel to provide such Services.
- 1.5 DESIGN PROFESSIONAL has employed and hereby designates _____ to serve as DESIGN PROFESSIONAL’s representative (hereinafter referred to as the “**Representative**”). The Representative is authorized and responsible to act on behalf of DESIGN PROFESSIONAL with respect to directing, coordinating and administering all aspects of the Services to be provided and performed under this Agreement. By execution of this Agreement, DESIGN PROFESSIONAL acknowledges that the Representative has full authority to bind and obligate DESIGN PROFESSIONAL on all matters arising out of or relating to this Agreement. DESIGN PROFESSIONAL agrees that the Representative shall devote whatever time is required to satisfactorily manage the Services to be provided and performed by DESIGN PROFESSIONAL hereunder. Further, DESIGN PROFESSIONAL agrees that the Representative identified above shall not be removed by DESIGN PROFESSIONAL from the Project without OWNER’s prior written approval, and if so removed must be immediately replaced with a person acceptable to OWNER.
- 1.6 DESIGN PROFESSIONAL agrees that its senior staff and its Consultants (defined below) who will perform any Services for the Project are subject to OWNER’s reasonable approval. Attached hereto as Schedule G is a listing of DESIGN PROFESSIONAL’s senior staff who have been assigned to the Project, as well as the Consultants who will be used by DESIGN PROFESSIONAL on the Project. None of the senior staff or Consultants identified in Schedule G shall be removed by DESIGN PROFESSIONAL from the Project without OWNER’s prior written approval (such approval not to be unreasonably withheld), and if so removed shall be immediately replaced with a person or firm acceptable to OWNER. DESIGN PROFESSIONAL further agrees, within fourteen (14) calendar days of receipt of a written request from OWNER, to promptly remove and replace the Representative, any other personnel employed or retained by DESIGN PROFESSIONAL, or any Consultants or any personnel of any such Consultants engaged by DESIGN PROFESSIONAL to provide and perform Services or work pursuant to the requirements of this Agreement, whom OWNER shall request in writing to be removed, which request may be made by OWNER with or without cause. DESIGN PROFESSIONAL shall be

responsible to OWNER for the acts and omissions of DESIGN PROFESSIONAL's employees and Consultants arising out of or resulting from the performance of the Services hereunder which do not conform to DESIGN PROFESSIONAL's standard of care, would constitute a breach of this Agreement if the act or omission were committed by DESIGN PROFESSIONAL or are otherwise wrongful or unlawful.

- 1.7 DESIGN PROFESSIONAL represents to OWNER that it has expertise in the type of professional architectural and/or engineering services that will be required for the Project. Drawings shall be prepared in electronic AutoCAD format, as determined by OWNER, and the Project Manual, as defined in the Owner's Design Guidelines identified in Exhibit 1 ("Design Guidelines") to Schedule A, shall be prepared as an electronic Portable Document Format (PDF) in accordance with OWNER's standards set forth in the Design Guidelines. By execution of this Agreement, DESIGN PROFESSIONAL acknowledges it has received and reviewed the version of OWNER's Design Guidelines identified in Exhibit 1 to Schedule A. DESIGN PROFESSIONAL agrees to follow, observe and design in accordance with the standards, requirements and conventions set forth in the Design Guidelines. DESIGN PROFESSIONAL further agrees that all Services to be provided by DESIGN PROFESSIONAL pursuant to this Agreement shall be subject to OWNER's reasonable review and approval and shall be in accordance with all applicable laws, statutes, ordinances, codes, rules, regulations (including utility regulations), local and state fire marshal requirements and the Florida Building Code, as well as the requirements of any governmental agencies which regulate or have jurisdiction over the Project or the Services to be provided and performed by DESIGN PROFESSIONAL, specifically including, without limitation, the Florida Department of Education State Requirements for Educational Facilities 2014 (or later version in effect at time of execution of this Agreement or any amendment hereto) (the "**SREF**"). Upon Architectural Notice to Proceed, DESIGN PROFESSIONAL further agrees to attend the first available training session provided by Orange County Public Schools, Building Code Compliance Office at no cost. In the event of any conflicts in these requirements, DESIGN PROFESSIONAL shall promptly notify OWNER of such conflict in writing and utilize its best professional judgment to resolve the conflict. Nothing in this Agreement shall be construed to eliminate DESIGN PROFESSIONAL's responsibility for compliance of its design, its documents and its Services with applicable local, state and federal statutes and regulations and applicable professional practice standards. OWNER's approval of the design documents in no way relieves DESIGN PROFESSIONAL of its obligation to deliver complete and accurate documents necessary for successful construction of the Project.
- 1.8 DESIGN PROFESSIONAL agrees not to divulge, furnish or make available to any third person, firm or organization, without OWNER's prior written consent, or unless incident to the proper performance of DESIGN PROFESSIONAL's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the Services to be rendered by DESIGN PROFESSIONAL hereunder. "Non-public information" shall mean any information or records that Chapter 119, Florida Statutes, exempts Owner from disclosing. DESIGN PROFESSIONAL shall require all of its employees, agents, and Consultants to comply with the provisions of this paragraph.

- 1.9 DESIGN PROFESSIONAL acknowledges that OWNER will be contracting with a construction manager or contractor who, if retained, shall be responsible for the construction of the Project, hereinafter referred to as “**CONSTRUCTION CONTRACTOR.**” DESIGN PROFESSIONAL agrees to cooperate with CONSTRUCTION CONTRACTOR with respect to performance of all work and furnishing of all labor, materials, equipment and other items and services required for construction of the Project by CONSTRUCTION CONTRACTOR, its subcontractors and suppliers of any tier, or other direct contractors or utility companies, if any (collectively, the “**Work**”). OWNER may elect to contract with CONSTRUCTION CONTRACTOR during the design phase of the Project. If CONSTRUCTION CONTRACTOR is retained during the design phase, DESIGN PROFESSIONAL agrees to incorporate, whenever practicable and consistent with good design, and after OWNER’s written approval, all suggestions or recommendations timely made by CONSTRUCTION CONTRACTOR with respect to the Project design.
- 1.10 In addition to any other presentation or meeting requirements placed upon DESIGN PROFESSIONAL elsewhere in this Agreement, DESIGN PROFESSIONAL shall provide the following services with respect to presentations, meetings and technical liaisons as part of its Basic Services and at no additional cost to OWNER:
- 1.10.1 DESIGN PROFESSIONAL shall manage DESIGN PROFESSIONAL’s Basic Services, consult with OWNER, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to OWNER.
 - 1.10.2 DESIGN PROFESSIONAL shall coordinate DESIGN PROFESSIONAL’s duties and responsibilities set forth in OWNER’s contract with CONSTRUCTION CONTRACTOR with DESIGN PROFESSIONAL’s Basic Services set forth in this Agreement and, further, shall coordinate its Basic Services with those services provided by OWNER and any of OWNER’s consultants and contractors.
 - 1.10.3 Prior to the commencement of design activities, OWNER and DESIGN PROFESSIONAL shall conduct a pre-design conference for the purpose of discussing issues relative to the Project, plans preparation and submittal procedures and to convey to DESIGN PROFESSIONAL such items to be provided by OWNER as may be available at that time.
 - 1.10.4 In the event any issues, defects or changes arise during the course of the Project which make additional presentations, other than those listed elsewhere in this Agreement, necessary in OWNER’s best interest, DESIGN PROFESSIONAL shall make any and all additional presentations to OWNER to ensure that OWNER is fully informed of any such issues and has the opportunity to resolve and address any such issues in a timely and prudent manner.

- 1.10.5 DESIGN PROFESSIONAL shall submit to OWNER, not later than the tenth (10th) day of each month, a progress report. The progress report shall reflect Project design and construction status, conditions of the Project and in particular, any deviations from schedule or requirements and reasons therefor, if any, plus a recommendation for obtaining satisfactory progress and construction.
 - 1.10.6 DESIGN PROFESSIONAL shall participate in regular Project Conferences with OWNER's staff as noted in Schedule A. These meetings shall be scheduled by OWNER at a location in Orange County, Florida, to be designated by OWNER.
 - 1.10.7 DESIGN PROFESSIONAL shall attend, as technical advisor to or agent of OWNER, as directed by OWNER, all meetings or hearings conducted by permitting agencies or public bodies in connection with any permit required for the construction of the Project.
 - 1.10.8 DESIGN PROFESSIONAL shall keep accurate minutes of all meetings and distribute copies of said minutes to OWNER and all in attendance. All meetings shall be coordinated with OWNER's staff. Meeting minutes shall be distributed within four (4) days of the meeting date.
 - 1.10.9 DESIGN PROFESSIONAL shall coordinate all questions concerning design standards and codes with the appropriate offices and departments of OWNER, as identified by OWNER's designated Project Manager. DESIGN PROFESSIONAL shall keep OWNER's Project Manager informed of changes or requirements issued by any of those offices or departments
 - 1.10.10 DESIGN PROFESSIONAL shall provide Total Quality Management (TQM) program services, including participation in the evaluation process as outlined in Schedule L. DESIGN PROFESSIONAL shall immediately inform OWNER's Project Manager of any quality concerns or issues which arise during the performance of this Agreement.
- 1.11 DESIGN PROFESSIONAL agrees, for both itself and all of its Consultants, to comply with all federal, state, and local laws, statutes, ordinances, rules and regulations with respect to safety and security at OWNER's facilities, including, without limitation, OWNER's drug program and any and all other rules, regulations, directives, policies or procedures of OWNER, now and in the future, as said rules and regulations may be modified and amended by OWNER from time to time (collectively, "Rules and Regulations"). In this regard, DESIGN PROFESSIONAL acknowledges having reviewed OWNER's Rules and Regulations currently in effect, including, without limitation, those Rules and Regulations available on OWNER's website (<https://www.ocps.net>) and has accounted for compliance with such Rules and Regulations in its fee and schedule for performance of its Basic Services.

- 1.11.1 DESIGN PROFESSIONAL expressly acknowledges and agrees that it is responsible for complying with all Rules and Regulations of the Jessica Lunsford Act. Further, DESIGN PROFESSIONAL shall comply with any Rules and Regulations implemented by OWNER in order to comply with the Jessica Lunsford Act.
 - 1.11.2 DESIGN PROFESSIONAL certifies that no person or Consultant will be assigned to perform any of the Services pursuant to this Agreement that poses any threat or risk of harm to the health, safety or welfare of any student, employee, guest, vendor or property of OWNER. Further, DESIGN PROFESSIONAL agrees to indemnify and hold harmless OWNER and its officers and employees from any and all claims, suits, damages, costs, or attorney fees incurred as a result of any harm done to any student, employee, guest, vendor or property of OWNER by DESIGN PROFESSIONAL's employees or Consultants assigned to perform any of the Services pursuant to this Agreement.
 - 1.11.3 OWNER may have one or more representatives visit the site of the Project from time to time, or on a full-time basis, as the construction progresses. DESIGN PROFESSIONAL shall not interfere with the functions of said representatives and will cooperate and work with said representatives. No action or failure to act by a representative shall relieve DESIGN PROFESSIONAL from any of its duties or obligations hereunder
- 1.12 DESIGN PROFESSIONAL shall, at appropriate times, contact the governmental authorities required to approve the Project Documents (hereinafter defined) and the entities providing utility services to the Project. In designing the Project, DESIGN PROFESSIONAL shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.
 - 1.13 DESIGN PROFESSIONAL shall assist OWNER in connection with filing documents required for the approval of governmental authorities having jurisdiction over the Project.
 - 1.14 Any Project Documents prepared or furnished by DESIGN PROFESSIONAL that contain errors, conflicts or omissions will be promptly corrected by DESIGN PROFESSIONAL at no additional cost to OWNER. DESIGN PROFESSIONAL shall promptly notify OWNER in writing of any discovered discrepancies, inconsistencies or missing information necessary to provide reasonably accurate and complete documents. DESIGN PROFESSIONAL shall be liable for any additional costs incurred by OWNER as a result of the errors, conflicts or omissions in the Project Documents prepared or furnished by DESIGN PROFESSIONAL, as further described in Schedule M.

ARTICLE 2 - ADDITIONAL SERVICES OF DESIGN PROFESSIONAL

If authorized in writing in advance by OWNER, DESIGN PROFESSIONAL shall furnish or obtain from others Additional Services (hereinafter defined) of the types listed in Article 2 herein.

These Additional Services will be paid for by OWNER as indicated in Article 5 and Schedule B. However, if OWNER and DESIGN PROFESSIONAL are unable to agree on a fee and schedule for the requested Additional Services in accordance with Article 5 and Schedule B or if the need to commence performance of the Additional Services is deemed so acute by OWNER as to not allow for sufficient time to negotiate the fee and schedule for performance, DESIGN PROFESSIONAL shall, nevertheless, promptly perform the Additional Services as directed by OWNER in a written directive. In that event, the fee and time for performance of the subject Additional Services shall be determined by OWNER. Without limitation, OWNER may establish a fee based on the basis of DESIGN PROFESSIONAL's billable rates with a "Not-To Exceed" cap. If DESIGN PROFESSIONAL disagrees with OWNER's determination, DESIGN PROFESSIONAL may make a claim pursuant to Article 21 of the Agreement within twenty-one (21) days of receipt of OWNER's determination of the fee and schedule for performance or else be deemed to have waived any claim it might otherwise have had on that matter.

The following services, if not otherwise specified in Schedule A as part of Basic Services, shall be Additional Services:

- 2.1 Preparation of applications and supporting documents (except those already to be furnished under this Agreement) for private or governmental grants, loans or advances in connection with the Project.
- 2.2 Basic Services resulting from significant changes in the program, general scope, extent or character of the Project or its design, including changes in size, complexity, OWNER's schedule or character of construction; and revising previously accepted studies, reports, design documents, or Project Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to and not reasonably anticipated prior to the preparation of such studies, reports or documents, or are due to any other causes beyond DESIGN PROFESSIONAL's control and fault.
- 2.3 Providing renderings or models for OWNER's use.
- 2.4 The preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; and evaluating processes available for licensing and assisting OWNER in obtaining process licensing.
- 2.5 Furnishing services of independent professional associates and consultants for other than the Basic Services to be provided by DESIGN PROFESSIONAL hereunder.
- 2.6 Travel required of DESIGN PROFESSIONAL outside of Orange County, Florida, and any adjacent counties, which was not reasonably inferable as a requirement of DESIGN PROFESSIONAL to render the Basic Services required herein, and is expressly directed by OWNER in writing, other than visits to the Project site or OWNER's offices which shall be part of Basic Services.

- 2.7 Assistance in connection with bid protests, rebidding (subject to the provisions of paragraph 1.10 above) or renegotiating contracts for construction, materials, equipment or services, except as otherwise provided for herein.
- 2.8 Providing any type of property surveys or related engineering services needed for the transfer of interests in real property and field surveys for design purposes and engineering surveys and staking to enable contractors to proceed with their work and providing other special field surveys.
- 2.9 Preparing to serve or serving as an expert witness for OWNER in any litigation, or other legal or administrative proceeding, involving the Project in which DESIGN PROFESSIONAL is not a party (except for assistance in consultations which are included as part of the Basic Services to be provided herein).
- 2.10 Additional services rendered by DESIGN PROFESSIONAL in connection with the Project, not otherwise provided for in this Agreement and not customarily furnished in accordance with generally accepted architectural and engineering practice, if authorized by Owner in advance in writing.

ARTICLE 3 - OWNER'S RESPONSIBILITIES

- 3.1 OWNER shall designate in writing a project coordinator to act as OWNER's representative with respect to the services to be rendered under this Agreement ("**Project Manager**"). The Project Manager shall have authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to DESIGN PROFESSIONAL's Services for the Project. However, except as may be otherwise expressly authorized in writing by the Orange County School Board, neither the Project Manager nor any other party is authorized to issue any verbal or written orders or instructions to DESIGN PROFESSIONAL that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) Scope of Services to be provided and performed by DESIGN PROFESSIONAL hereunder; (2) the time DESIGN PROFESSIONAL is obligated to complete all such Services; or (3) the amount of compensation OWNER is obligated or committed to pay DESIGN PROFESSIONAL. Additional Services must be approved in writing in the form of a written and executed amendment to this Agreement prior to starting such Additional Services. OWNER will not be responsible for the costs of Additional Services commenced without its express prior written approval. Failure to obtain prior written approval for Additional Services waives DESIGN PROFESSIONAL's claim that it performed Additional Services and, instead, such services will be deemed to be part of the Basic Services required of DESIGN PROFESSIONAL hereunder.
- 3.2 OWNER shall provide, if available, all of OWNER's criteria and information requested by DESIGN PROFESSIONAL as to OWNER's requirements for the Project, including, without limitation, design objectives and constraints, space requirements, educational specifications, capacity and performance requirements, flexibility and expendability, and any budgetary limitations, which are not addressed within the Scope of Services.

- 3.3 Upon request from DESIGN PROFESSIONAL, OWNER will assist DESIGN PROFESSIONAL by making available to DESIGN PROFESSIONAL all reasonably available information in OWNER's possession pertinent to the Project, including existing drawings, specifications, shop drawings, product literature, previous reports and any other data relative to design or construction of the Project.
- 3.4 OWNER shall arrange for access to and make all provisions for DESIGN PROFESSIONAL to enter the Project site to perform the Services to be provided by DESIGN PROFESSIONAL under this Agreement. DESIGN PROFESSIONAL acknowledges that such access may be provided during times that are not the normal business hours of DESIGN PROFESSIONAL.
- 3.5 If applicable, OWNER shall provide written notice to DESIGN PROFESSIONAL of any deficiencies or defects discovered by OWNER with respect to the Basic Services to be rendered by DESIGN PROFESSIONAL hereunder.
- 3.6 Wherever the terms of this Agreement refer to some action, consent, or approval (excluding approvals of Additional Services or changes to this Agreement) to be provided by OWNER or some notice, report or document is to be provided to OWNER, such reference to "OWNER" shall mean OWNER's Project Manager, unless otherwise stated by OWNER in writing.

ARTICLE 4 - TIME

- 4.1 Basic Services to be rendered by DESIGN PROFESSIONAL shall be commenced subsequent to the execution of this Agreement and upon written "Notice of Commencement / Notice to Proceed" from OWNER for all or any designated portion of the Project and shall be performed and completed in accordance with the Design Schedule attached hereto and made a part hereof as Schedule C ("**Design Schedule**"). Time is of the essence with respect to the performance of this Agreement. The Design Schedule shall include allowances for periods of time required for OWNER's review, for the performance of OWNER's consultants and contractors, and for approval of submissions by authorities having jurisdiction over the Project. With OWNER's written approval, DESIGN PROFESSIONAL shall adjust the Design Schedule, if necessary as the Project proceeds until the commencement of construction.
- 4.2 Should DESIGN PROFESSIONAL be obstructed or delayed in the prosecution or completion of its Services as a result of unforeseeable causes beyond the control of DESIGN PROFESSIONAL, and not due to its own fault or neglect, including acts of God or of public enemy, acts of government or of OWNER, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then DESIGN PROFESSIONAL shall notify OWNER in writing within three (3) business days (unless OWNER expressly agrees in writing to a longer period of time) after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which DESIGN PROFESSIONAL may have had to request a time extension.

- 4.2.1 The term "**business day**" shall mean all days of the week excluding Saturdays and Sundays and all legal holidays observed by OWNER.
- 4.3 No interruption, interference, inefficiency, suspension or delay in the commencement or progress of DESIGN PROFESSIONAL's Services from any cause whatsoever, including those for which OWNER may be responsible in whole or in part, shall relieve DESIGN PROFESSIONAL of its duty to perform or give rise to any right to damages or additional compensation from OWNER. DESIGN PROFESSIONAL expressly acknowledges and agrees that it shall receive no damages for delay. DESIGN PROFESSIONAL's sole remedy, if any, against OWNER will be the right to seek an extension of time to its schedule; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion. Provided, however, if through no fault and neglect of DESIGN PROFESSIONAL, the Basic Services to be provided hereunder have been delayed for a total of six months during the design phases or three months during the **Construction Phase**, DESIGN PROFESSIONAL's compensation shall be equitably adjusted, with respect to those Basic Services that have not yet been performed, to reflect the incremental increase in costs for labor and materials experienced by DESIGN PROFESSIONAL, if any, as a result of such delays. Such adjustment shall be determined by OWNER in its sole and absolute discretion.
- 4.4 Should DESIGN PROFESSIONAL fail to commence, provide, perform or complete any of the Services to be provided hereunder in a timely and diligent manner, in addition to any other rights or remedies available to OWNER hereunder, OWNER at its sole discretion and option may withhold any and all payments due and owing to DESIGN PROFESSIONAL until such time as DESIGN PROFESSIONAL resumes performance of its obligations hereunder in such a manner so as to establish to OWNER's satisfaction that DESIGN PROFESSIONAL's performance is or will shortly be back on schedule.
- 4.5 DESIGN PROFESSIONAL acknowledges that its timely delivery of deliverables required by this Agreement and the "Deliverable Schedule" set forth in the Design Guidelines, and its timely response to questions, required revisions to Project Documents, submittals, and requests for information or clarification, is critical to the Project. DESIGN PROFESSIONAL's action in reviewing and responding to questions, required revisions to Project Documents, submittals, and requests for information or clarification shall be taken in accordance with all applicable timeframes specified in this Agreement, the Deliverable Schedule, or the latest Design Schedule approved by OWNER or, in the absence of a specified timeframe, with reasonable promptness, but in no event more than: (a) in the case of an initial response, seven (7) business days after DESIGN PROFESSIONAL's receipt of the question, submittals or request for information or clarification, or (b) in the case of a response to a revised submittal, five (5) business days after DESIGN PROFESSIONAL's receipt of the revised submittal.
- 4.6 In addition to any other right under this Agreement, in the event design phase approvals are made by OWNER containing mandatories, provisos, or similar conditions, ten percent

(10%) of DESIGN PROFESSIONAL's document approval payment will be withheld by OWNER until such mandatories, provisos, or similar conditional remarks have been satisfactorily resolved with OWNER by DESIGN PROFESSIONAL.

ARTICLE 5 - COMPENSATION

- 5.1 Compensation and the manner of payment of such compensation by OWNER for Basic Services rendered hereunder by DESIGN PROFESSIONAL shall be as prescribed in Schedule B, entitled "Basis of Compensation", which is attached hereto and made a part hereof.

ARTICLE 6 - OWNERSHIP OF DOCUMENTS

- 6.1 Upon the completion or termination of this Agreement, as directed by OWNER, DESIGN PROFESSIONAL shall deliver to OWNER copies or originals of all records, documents, drawings, notes, tracings, plans, Auto CAD and/or Revit files, specifications, maps, evaluations, reports and other technical data, other than working papers, prepared or developed by or for DESIGN PROFESSIONAL under this Agreement, including, without limitation, all drawings, specifications, bid documents, Project Manual, contract conditions, and addenda thereto ("**Project Documents**").
- 6.2 OWNER shall specify whether the originals or copies of such Project Documents are to be delivered by DESIGN PROFESSIONAL. DESIGN PROFESSIONAL shall be solely responsible for all costs associated with delivering to OWNER the Project Documents. DESIGN PROFESSIONAL, at its own expense, may retain copies of the Project Documents for its files and internal use.

ARTICLE 7. – OWNERSHIP AND LICENSE OF DOCUMENTS AND INTELLECTUAL PROPERTY

- 7.1 All records, documents, drawings, notes, tracings, plans, computer aided design (CAD) files, specifications, maps, models, presentations, evaluations, reports and other technical data, and schematics prepared or developed by or for DESIGN PROFESSIONAL, or otherwise provided to OWNER, pursuant to this Agreement shall be Project Documents. To the extent they have any such rights, DESIGN PROFESSIONAL and its Consultants shall retain all common law, statutory and other reserved rights, including copyrights, in the Project Documents.
- 7.2 DESIGN PROFESSIONAL shall grant, and hereby does grant, OWNER an unlimited, non-exclusive, worldwide, irrevocable, perpetual, fully-paid-up, license to reproduce, create derivatives of, distribute, perform, publish and otherwise use all Project Documents in which DESIGN PROFESSIONAL has or may have any rights (i) as reasonably necessary for archival, safety, and disaster recovery purposes, (ii) for submission or distribution, as OWNER reasonably determines is prudent or proper, to meet official regulatory requirements, or for similar purposes, in connection with this Project, (iii) for constructing, completing, reconstructing, repairing, renovating, altering, adding to,

maintaining, occupying, and otherwise using the Project, and (iv) for the planning, design, construction, completion, reconstruction, repair, renovation, alteration, use, occupancy, and maintenance of other structures and projects.

- 7.3 DESIGN PROFESSIONAL shall obtain from each of DESIGN PROFESSIONAL's consultants, subconsultants, contractors, subcontractors, agents and representatives (each, individually, a "**Consultant**", and, collectively, "**Consultants**") either an assignment from the Consultant to OWNER of all common law, statutory and other reserved rights, including copyrights and performance rights, in and to all Project Documents in which the Consultant has or may have such rights, or an unlimited, worldwide, perpetual, irrevocable, fully-paid-up license running from DESIGN PROFESSIONAL's Consultant to OWNER, granting OWNER the right to reproduce, create derivatives of, distribute, and use all Project Documents in which DESIGN PROFESSIONAL's Consultant has or may have any rights (i) as reasonably necessary for archival, safety, and disaster recovery purposes, (ii) for submission or distribution, as OWNER reasonably determines is prudent or proper, to meet official regulatory requirements, or for similar purposes, in connection with this Project, (iii) for constructing, completing, reconstructing, repairing, renovating, altering, adding to, maintaining, occupying and otherwise using the Project, and (iv) for the planning, design, construction, completion, reconstruction, repair, renovation, alteration, use, occupancy, and maintenance of other structures and projects.
- 7.4 DESIGN PROFESSIONAL shall grant, and hereby does grant, OWNER, an unlimited, worldwide, non-exclusive, irrevocable, perpetual, fully-paid-up license (i) to design, commission, and create architectural works that are derivatives of or substantially similar to this Project or any architectural work portrayed in any version of any Project Document, and (ii) to use, reproduce, make derivatives of, publish, perform, distribute copies of, and otherwise use any architectural or other works created, authored, or provided by DESIGN PROFESSIONAL or DESIGN PROFESSIONAL's Consultants pursuant to this Agreement, for marketing, promotional, advertising, ordinary business, and educational purposes, in any medium.
- 7.5 All licenses granted herein or pursuant to this Agreement are worldwide, perpetual and irrevocable and shall continue even in the event this Agreement is terminated for any reason. DESIGN PROFESSIONAL consents to OWNER's use of the Project Documents to complete the Project following DESIGN PROFESSIONAL's termination for any reason or to perform additions to or remodeling or renovations of the Project. Further, in the event of any such termination, DESIGN PROFESSIONAL hereby consents to any use of any and all Project Documents by any replacement architects, contractors, engineers or other professionals retained by OWNER; provided, however, DESIGN PROFESSIONAL shall not be liable for any of the design work performed by such replacement architects, engineers or other professionals.
- 7.6 DESIGN PROFESSIONAL, upon reasonable request by OWNER, even if such request is made after termination or expiration of this Agreement for any reason, shall take all steps reasonably required by OWNER to memorialize, perfect, substantiate, record, or evidence

all licenses, assignments, and rights OWNER has, is due, or may have under or pursuant to this Agreement, and shall do so at no additional charge to OWNER.

- 7.7 DESIGN PROFESSIONAL shall, upon reasonable request by OWNER, even if such request is made after termination or expiration of this Agreement for any reason, or upon completion of the Project should no such request be made by OWNER, provide to OWNER (i) reproducible copies of all Project Documents, unless OWNER specifies that originals are required, (ii) written copies of all licenses and assignments obtained by DESIGN PROFESSIONAL from DESIGN PROFESSIONAL's Consultants pursuant to paragraph 7.3, and (iii) a written license from DESIGN PROFESSIONAL to OWNER pursuant to paragraph 7.2. Wherever practical, all such copies of the Project Documents shall be provided in both editable electronic form and in hard paper form. DESIGN PROFESSIONAL shall not be responsible for inadvertent errors caused by the electronic transmission of Project Documents, unless it knew or reasonably should have known of such errors and failed to promptly notify OWNER in writing. In the event of any discrepancies between any such electronic copies and hard paper copies issued by DESIGN PROFESSIONAL, the hard paper copy shall control.
- 7.8 Without limitation, OWNER may assign, encumber, or sublicense any license granted herein or pursuant to this Agreement to a lender, a tenant of the Project, or a subsequent owner of any portion the Project. Further, OWNER shall be permitted to authorize contractors, engineers, subcontractors, sub-subcontractors, material or equipment suppliers, consultants, agents and architects to reproduce applicable portions of the Project Documents as appropriate to and for use in connection with the completion of the Project or OWNER's exercise of any right or license granted herein or pursuant to this Agreement.
- 7.9 DESIGN PROFESSIONAL warrants to OWNER that it has full right and authority to grant the licenses specified herein to OWNER. DESIGN PROFESSIONAL hereby represents and warrants that all Project Documents, architectural and engineering works, or other works developed, authored, or provided to OWNER pursuant to this Agreement shall be original in DESIGN PROFESSIONAL or DESIGN PROFESSIONAL's Consultants, in the public domain, or developed, authored or provided pursuant to a valid, enforceable and appropriate license or assignment and shall not infringe any copyright, performance right, trademark, patent or other intellectual property right of any third party. Furthermore, to the fullest extent permitted by law, DESIGN PROFESSIONAL shall indemnify, protect and hold harmless OWNER and its officers and employees (collectively, "**Indemnitees**") from and against all liabilities, damages, losses and costs, including reasonable attorneys' fees, arising out of, or resulting from, any claim by any third party asserting that any Project Document, architectural and engineering work, or other work developed or authored by DESIGN PROFESSIONAL or DESIGN PROFESSIONAL's Consultants, or provided to OWNER by DESIGN PROFESSIONAL, pursuant to this Agreement infringes any intellectual property right, including copyright, of any person.

ARTICLE 8 – MAINTENANCE OF RECORDS

- 8.1 DESIGN PROFESSIONAL shall keep adequate records and supporting documentation which concern or reflect its Services hereunder, including, without limitation, all Project Documents and licenses and assignments obtained by DESIGN PROFESSIONAL and DESIGN PROFESSIONAL's Consultants in accordance with Article 7 hereof. The records and documentation shall be retained by DESIGN PROFESSIONAL in hard copy format for a minimum of three (3) years and editable electronic format for a minimum of ten (10) years from the later of: (i) the date of termination of this Agreement, (ii) the date the Project is completed, or (iii) such longer period of time as may be required by law or this Agreement (collectively, "**Retention Period**"). OWNER, or any duly authorized agents or representatives of OWNER, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and the Retention Period; provided, however, such activity shall be conducted only during normal business hours.
- 8.2 DESIGN PROFESSIONAL shall keep and maintain public records as defined under Chapter 119, Florida Statutes, that ordinarily and necessarily would be required by OWNER in order to perform the service. DESIGN PROFESSIONAL shall provide the public with access to public records on the same terms and conditions that OWNER would provide the records and at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. DESIGN PROFESSIONAL shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law. DESIGN PROFESSIONAL shall meet all requirements for retaining public records and transfer, at no cost, to OWNER all public records in possession of DESIGN PROFESSIONAL upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to OWNER in a format that is compatible with the information technology systems of OWNER.
- 8.3 The records specified above in paragraph 8.2 include accurate time records, which DESIGN PROFESSIONAL agrees to keep and maintain, from day to day, showing the time expended by each principal and employee of DESIGN PROFESSIONAL in performing the Services and therein specifying the services performed by each, with all such time records to be kept within one-sixth of an hour. At the request of OWNER, DESIGN PROFESSIONAL shall furnish to OWNER any of the aforesaid time records, as well as invoices or proofs showing DESIGN PROFESSIONAL's incurrence and/or payment of any reimbursable expenses.
- 8.4 **IF THE DESIGN PROFESSIONAL HAS QUESTIONS REGARDING THE APPLICATION OF SECTION 119.0701, FLORIDA STATUTES, TO THE DESIGN PROFESSIONAL'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE SBOC CUSTODIAN OF PUBLIC RECORDS AT 407-317-3703, OR VIA EMAIL AT records@ocps.net, OR VIA U.S. MAIL AT P.O. BOX 271, ORLANDO, FLORIDA 32802-0271.**

ARTICLE 9 - INDEMNIFICATION

- 9.1 To the maximum extent permitted by applicable law, DESIGN PROFESSIONAL shall defend, indemnify and hold harmless the Indemnitees, 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 intentionally wrongful conduct of DESIGN PROFESSIONAL or anyone employed or utilized by DESIGN PROFESSIONAL in the performance of this Agreement, including without limitation DESIGN PROFESSIONAL's Consultants. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph 9.1. DESIGN PROFESSIONAL's indemnification obligations under this Agreement, including those specified in this paragraph 9.1, shall be deemed part of the Project specifications and to fully comply with Section 725.08, Florida Statutes, including any amendments thereto, in all respects. If any word, clause or provision of any of the indemnification provisions of this Agreement is determined not to be in compliance with Section 725.08, Florida Statutes, including any amendments thereto, it shall be stricken and the remaining words, clauses and provisions shall remain in full force and effect. It is the intent of the parties that DESIGN PROFESSIONAL's indemnification obligations comply fully with Section 725.08, Florida Statutes, in all respects. Furthermore, DESIGN PROFESSIONAL's indemnification obligations in this Agreement are in addition to and not in lieu of any common law indemnification to which any of the Indemnitees are entitled.
- 9.2 The duty of DESIGN PROFESSIONAL to indemnify and hold harmless the Indemnitees includes the separate and independent duty to defend the Indemnitees, which duty arises immediately upon receipt by DESIGN PROFESSIONAL of the tender of any indemnity claim from an Indemnatee which under the written content of the claimant's description of its claim reasonably appears to be within DESIGN PROFESSIONAL's indemnification obligation. DESIGN PROFESSIONAL's obligation to defend the Indemnatee(s) shall be at DESIGN PROFESSIONAL's sole expense. DESIGN PROFESSIONAL shall respond within fifteen (15) calendar days to the tender of any indemnity claim for defense and/or indemnity by an Indemnatee, unless the Indemnatee agrees in writing to an extension of this time. The defense provided to the Indemnitees by DESIGN PROFESSIONAL shall be by well qualified, adequately insured and experienced legal counsel acceptable to OWNER. By proceeding to defend an indemnity claim, DESIGN PROFESSIONAL shall not be deemed to have admitted to an obligation to provide indemnification and defense and DESIGN PROFESSIONAL may provide a defense under a written reservation of rights.

ARTICLE 10 - INSURANCE

- 10.1 During the term of this Agreement or for such longer period as otherwise specified in this Agreement or required by applicable law, DESIGN PROFESSIONAL shall maintain at its sole expense, the following types of insurance described herein. Such insurance shall apply to DESIGN PROFESSIONAL, its employees, agents, subcontractors, and subconsultants.

<input checked="" type="checkbox"/>	A. Commercial General Liability	Each Occurrence	\$2,000,000
		General Aggregate	\$3,000,000
		Products & Completed Operations	\$3,000,000
<input checked="" type="checkbox"/>	B. Auto Liability	Combined Single Limit	\$1,000,000
<input checked="" type="checkbox"/>	C. Workers Compensation & Employers Liability	W.C.	Per Florida Statute 440
		E.L. Each Accident	\$1,000,000
		E.L. Disease – Each Employee	\$1,000,000
		E.L. Disease – Policy Limit	\$1,000,000
<input checked="" type="checkbox"/>	D. Professional Liability (Errors & Omission)	Each Claim	\$3,000,000
		Aggregate per Project	\$3,000,000
<input checked="" type="checkbox"/>	Other insurance as listed below, where applicable		

Such insurance can be evidenced in any combination to meet above limits when using a “follow form” excess liability/umbrella policy for one or more lines of coverage.

10.2 The above listing of insurance requirements is only a quick reference and the following details of the DESIGN PROFESSIONAL’s contractual obligation for compliance with insurance:

10.2.1 Professional Liability insurance for any and all claims as a result of the action, lack of action, error or omission of by DESIGN PROFESSIONAL, its employees, its subcontractors or SUBCONSULTANTS in an amount not less than Three Million Dollars (\$3,000,000) each claim, per Project/Site Location. If such policy is written on a “claims made basis”, coverage shall remain in effect for five (5) years after the expiration or termination of this Agreement or its extension or after the completion of the project coverage shall remain in effect for five (5) years for such services in this Agreement, whichever is later.

10.2.2 Commercial General Liability insurance, including products and completed ops and contractual liability, arising from any and all claims for property damage or bodily injury, including death, from its premises and operations, in an amount not less than Two Million Dollars (\$2,000,000) each occurrence and Three Million Dollars (\$3,000,000) in the aggregate. The Aggregate Limits shall be separately applicable to this project through the use of ISO endorsement CG 2503 or its equivalent. This policy must be endorsed or include The School Board of Orange County Florida, its board

members, employees and representatives as additional insured using language equivalent to ISO CG 2038 and CG 2037.

10.2.3 Automobile Liability insurance, including all owned, non-owned, and hired vehicles when used in conjunction with providing services or driven on OWNER property to perform such services in this Agreement, in an amount not less than One Million Dollars (\$1,000,000) each accident.

10.2.4 Workers' Compensation insurance in statutory amounts and Employers Liability in an amount not less than One Million Dollars (\$1,000,000) each accident/disease. This insurance shall apply to DESIGN PROFESSIONAL employees engaged in the performance of the services in this Agreement.

10.2.5 Above insurance and required limits can be met by maintaining an umbrella or excess liability policy which shall "follow form" of all underlying policies. Such coverage shall drop down as primary on the exhaustion of any aggregate limit, which shall apply on a per project basis.

10.2.6 DESIGN PROFESSIONAL shall maintain insurance or shall be financially responsible for replacement costs of valuable papers, including but not limited to drawings, designs, plans, specifications, reports, maps, surveys, blueprints, certifications, and other records that may require replacement or duplication as a result of a loss or damages during the performances of the services.

10.3 Insurance Expectations: DESIGN PROFESSIONAL agrees to the following as it relates to its contractual obligation and shall ensure all insurance companies from whom DESIGN PROFESSIONAL obtains the insurance policies required herein this Agreement must meet the following minimum requirements:

10.3.1 The insurance company must be duly licensed and authorized to transact the appropriate insurance business in the State of Florida.

10.3.2 The insurance company must have been in such insurance business continuously for not less than five (5) years immediately prior to the date of execution of this Agreement.

10.3.3 The insurance company must have an A. M. Best financial rating of A-(VI) or higher.

10.3.4 All insurance shall be primary and not contributory to any other insurance carried by OWNER. This shall also apply to any self-insured risk management program maintained by OWNER.

10.3.5 To the extent permitted by law, DESIGN PROFESSIONAL's insurance shall contain an endorsement or language waiving any rights to recover from OWNER or its insurance. To the extent that such waiver does not

respond (whether failure to comply is result of DESIGN PROFESSIONAL, its agent, or carrier error), DESIGN PROFESSIONAL shall be liable for the costs and expenses incurred by OWNER had such waiver applied

- 10.3.6 DESIGN PROFESSIONAL agrees that no services shall begin until proof of insurance is received by OWNER. Receipt of proof of insurance shall not be construed as an approval of Awardee's insurance or a release or waiver of DESIGN PROFESSIONAL's obligation to maintain the required insurance in this Agreement. Upon reasonable request, DESIGN PROFESSIONAL agrees to provide OWNER a copy of its insurance policies, forms, and endorsements in its entirety.
- 10.3.7 It is the requirement of DESIGN PROFESSIONAL to prove their capacity to provide the required insurance as set forth in this Agreement and shall be attached to said Agreement in Schedule D and updated accordingly by providing a Certificate of Liability Insurance (Acord 25) evidencing the specified insurance requirements herein, which must also reflect any deductible(s) or retentions. Certificate of Insurance shall also reference the Project Name/Number, site locations and address.
- 10.3.8 Any required insurance that DESIGN PROFESSIONAL self-insures or maintained a deductible or retention in excess of Ten Thousand Dollars (\$10,000) shall be pre-approved by OWNER's Risk Management department and referenced in an addendum to this Agreement. To the extent any insurance maintained by DESIGN PROFESSIONAL has a deductible or retention, (whether with or without OWNER's knowledge or approval) DESIGN PROFESSIONAL shall be financially responsible for paying claims and expenses within such deductible or self-insured retention on behalf of OWNER (as additional insured) or reimburse OWNER, when such above required insurance would respond, had no deductible or retention been in place.
- 10.3.9 DESIGN PROFESSIONAL shall notify OWNER'S Risk Management department within thirty (30) days of any material changes or notices of cancellation received by DESIGN PROFESSIONAL from its insurer on any above required insurance.
- 10.3.10 The following language is to be added in the Description Block:

“Project Name:

The School Board of Orange County Florida, its board members, employees and representatives are included as Additional Insured with respect to General and Auto Liability coverage and coverage should apply as primary and non-contributory. A waiver of subrogation in favor of the additional insured applies on the general liability, auto liability and workers' compensation”.

10.3.11 The Certificate Holder is to be shown as:

The School Board of Orange County, Florida
445 W. Amelia Street
Orlando, Florida 32801

ARTICLE 11 - SERVICES BY DESIGN PROFESSIONAL'S OWN STAFF

11.1 The Services to be performed hereunder shall be performed by the DESIGN PROFESSIONAL's staff and Consultants identified in Schedule G, unless otherwise authorized in writing by OWNER. The employment of, contract with, or use of the services of any other person or firm by DESIGN PROFESSIONAL, as independent consultant or otherwise, shall be subject to the prior written approval of OWNER. No provision of this Agreement shall, however, be construed as constituting an agreement between OWNER and any such other person or firm. Nor shall anything contained herein be deemed to give any such party or any third party any claim or right of action against OWNER beyond such as may otherwise exist without regard to this Agreement. Notwithstanding the foregoing, OWNER shall enjoy the same benefits and rights as to DESIGN PROFESSIONAL's Consultants as DESIGN PROFESSIONAL enjoys with respect to DESIGN PROFESSIONAL's Consultants and all of DESIGN PROFESSIONAL's contracts with DESIGN PROFESSIONAL's Consultants shall be in writing, signed by both parties and shall include the following provision: "OWNER is intended to be an express, recognized third-party beneficiary of this Agreement." Should OWNER terminate this Agreement with DESIGN PROFESSIONAL, OWNER shall, upon OWNER's request, obtain assignment of those of the Consultant's agreement(s) with DESIGN PROFESSIONAL elected by OWNER. Each of DESIGN PROFESSIONAL's agreements with a Consultant shall specifically provide that OWNER shall only be responsible to the Consultant for those obligations of DESIGN PROFESSIONAL that accrue subsequent to OWNER's exercise of its right to take an assignment of such agreement. Additionally, each of DESIGN PROFESSIONAL's agreements with a Consultant shall require or provide that: (a) nothing in said consulting agreement or this Agreement creates a contractual relationship between OWNER and the Consultant unless OWNER elects to accept contingent assignment of the consulting agreement, and (b) the Consultant shall resolve all disputes involving OWNER in the same manner as provided in Articles 19 and 21 below. As a condition precedent to OWNER's obligation to pay DESIGN PROFESSIONAL's invoices, DESIGN PROFESSIONAL shall provide to OWNER copies of all of DESIGN PROFESSIONAL's agreements with DESIGN PROFESSIONAL's Consultants.

ARTICLE 12 – WAIVER OF CLAIMS

12.1 DESIGN PROFESSIONAL's acceptance of final payment shall constitute a full waiver of any and all claims by it against OWNER arising out of this Agreement or otherwise related to the Project, except those previously made in writing and identified by DESIGN PROFESSIONAL as unsettled at the time of the final payment. Neither the acceptance of

DESIGN PROFESSIONAL's Services nor payment by OWNER shall be deemed to be a waiver of any of OWNER's rights against DESIGN PROFESSIONAL.

- 12.2 DESIGN PROFESSIONAL waives all claims against OWNER for consequential, special and punitive damages. This waiver is applicable, without limitation, to all consequential, special and punitive damages due to OWNER's termination of this Agreement.
- 12.3 Nothing in this Agreement is intended or shall be construed to require OWNER to determine the adequacy, accuracy or sufficiency of the design, the Project Documents or DESIGN PROFESSIONAL's Basic Services, which are each DESIGN PROFESSIONAL's responsibility. OWNER's review, inspection, acceptance, or payment for any of DESIGN PROFESSIONAL's Services shall not relieve DESIGN PROFESSIONAL of any of its duties, obligations or responsibilities under this Agreement or constitute acceptance of Services that fail to conform to the requirements of this Agreement, unless OWNER expressly accepts such non-conforming services in writing.

ARTICLE 13 – TERMINATION OR SUSPENSION

- 13.1 DESIGN PROFESSIONAL shall be considered in material default of this Agreement and such default will be considered cause for OWNER to terminate this Agreement, in whole or in part, as further set forth herein, for any of the following reasons: (a) failure to begin work under the Agreement within the time(s) specified in written authorization(s) to proceed, or (b) failure to properly and timely perform the Services to be provided hereunder or as directed by OWNER, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by DESIGN PROFESSIONAL or by any of DESIGN PROFESSIONAL's principals, partners, officers or directors, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) otherwise materially breaches this Agreement. OWNER may so terminate this Agreement, in whole or in part, by giving DESIGN PROFESSIONAL five (5) business days written notice.
- 13.2 If, after notice of termination of this Agreement as provided for in paragraph 13.1 above, it is determined for any reason that DESIGN PROFESSIONAL was not in default, or that its default was excusable, or that OWNER otherwise was not entitled to the remedy against DESIGN PROFESSIONAL provided for in paragraph 13.1, then the notice of termination given pursuant to paragraph 13.1 shall be deemed to be the notice of termination provided for in paragraph 13.3 below and DESIGN PROFESSIONAL's remedies against OWNER shall be the same as and limited to those afforded DESIGN PROFESSIONAL under paragraph 13.3 below.
- 13.3 OWNER shall have the right to terminate this Agreement, in whole or in part, without cause upon five (5) business days written notice to DESIGN PROFESSIONAL. In the event of such termination for convenience, DESIGN PROFESSIONAL's recovery against OWNER shall be limited to that portion of DESIGN PROFESSIONAL's compensation earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by DESIGN PROFESSIONAL that are directly attributable to the termination, but DESIGN PROFESSIONAL shall not be entitled to any other or further

recovery against OWNER, including anticipated fees, profit on Services not required to be performed, or attorneys' fees and costs.

- 13.4 Upon termination, as set forth in paragraph 6.1 herein, DESIGN PROFESSIONAL shall deliver to OWNER all Project Documents, including without limitation all papers, records, documents, Auto CAD and Revit files, drawings, calculations, models, and other materials in DESIGN PROFESSIONAL's possession or control arising out of or relating to this Agreement.
- 13.5 OWNER shall have the authority to suspend all or any portions of the Services to be provided by DESIGN PROFESSIONAL hereunder upon giving DESIGN PROFESSIONAL two (2) business days prior written notice of such suspension. If all or any portion of the Services to be rendered hereunder are so suspended, DESIGN PROFESSIONAL's sole and exclusive remedy shall be to seek an extension of time to its schedule subject to the procedures set forth in Article 4 and to the provisions of paragraph 4.3 herein.

ARTICLE 14 – SECURING AGREEMENT / PUBLIC ENTITY CRIMES

- 14.1 DESIGN PROFESSIONAL warrants that DESIGN PROFESSIONAL has not employed or retained any company or person, other than a bona fide employee working solely for DESIGN PROFESSIONAL, to solicit or secure this Agreement and that DESIGN PROFESSIONAL has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for DESIGN PROFESSIONAL, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the OWNER shall have the right to terminate the Agreement without liability and, at its discretion, to deduct from the compensation schedule, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration. At the time this Agreement is executed, DESIGN PROFESSIONAL shall sign and deliver to OWNER the Truth-In-Negotiation Certificate attached hereto and made a part hereof as Schedule E. DESIGN PROFESSIONAL's compensation shall be adjusted to exclude any significant sums by which OWNER determines the compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments must be made within one (1) year following the completion or earlier termination of this Agreement.
- 14.2 By its execution of this Agreement, DESIGN PROFESSIONAL acknowledges that it has been informed by OWNER of the terms of Section 287.133(2)(a) of the Florida Statutes which read as follows:

“A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with

a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.”

DESIGN PROFESSIONAL must notify OWNER within thirty (30) days after a conviction of a public entity crime applicable to DESIGN PROFESSIONAL or to an affiliate of DESIGN PROFESSIONAL.

ARTICLE 15 – CONFLICT OF INTEREST

- 15.1 DESIGN PROFESSIONAL represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of Services required hereunder. DESIGN PROFESSIONAL further represents that no persons having any such interest shall be employed to perform those Services.

ARTICLE 16 – MODIFICATION

- 16.1 No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

ARTICLE 17 – NOTICES AND ADDRESS OF RECORD

- 17.1 All notices, consents, or approvals required or permitted to be given under the terms of this Agreement shall be in writing and shall be sent by: (a) FedEx or other nationally recognized overnight air courier service, postage prepaid, for next business day delivery or (b) hand delivery, to the notice address of the respective parties set forth below in paragraph 17.2 or 17.3, as applicable. Notice given in accordance with this paragraph shall be effective on the earlier of the day actually received, if received on a business day (or, if not received on a business day, on the first business day after the day of receipt) or, regardless of whether or not received after the dates specified below, (i) on the date of delivery or refusal of delivery, if by hand delivery, or (ii) on the first business day after having been delivered to a nationally recognized overnight air courier service, such as FedEx, for “next business day” delivery in each case addressed to the respective party at the address for notice to the party specified in paragraph 17.2 or 17.3, as applicable, below.

17.2 Notices, consents or approvals required or permitted to be given to OWNER shall be delivered to OWNER at:

Orange County Public Schools
Facilities Services, Design & Construction
6501 Magic Way, Building 200
Orlando, Florida 32809
Attention: _____ - Project Manager

With a copy to:

Orange County Public Schools
Director, Facilities & Construction Contracting, Procurement Services
6501 Magic Way, Building 101B
Orlando, Florida 32809
Attention: William Ames, Director, Facilities & Construction Contracting

17.3 Notices, consents or approvals required or permitted to be given to DESIGN PROFESSIONAL shall be delivered to DESIGN PROFESSIONAL at:

ATTENTION: _____

17.4 Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

ARTICLE 18 – MISCELLANEOUS

18.1 DESIGN PROFESSIONAL, in representing OWNER, shall promote the best interest of OWNER and assume towards OWNER a fiduciary relationship of the highest trust, confidence, and fair dealing.

18.2 No modification, waiver, suspension or termination of the Agreement or of any terms thereof shall impair the rights or liabilities of either party.

18.3 OWNER and DESIGN PROFESSIONAL, respectively, bind themselves, their successors and assigns to this Agreement; provided, however, this Agreement is not assignable, in whole or in part, by DESIGN PROFESSIONAL without the prior written consent of OWNER, which consent may be granted or withheld in OWNER’s sole and absolute discretion, and any attempted assignment in violation of the foregoing prohibition is void.

18.4 Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement. Failure on the part of either OWNER or DESIGN

PROFESSIONAL to enforce any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party. Further, the failure of a party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance. No consent or waiver by OWNER or DESIGN PROFESSIONAL shall be effective unless it is in writing and then only to the extent specifically stated.

- 18.5 The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.
- 18.6 The headings of the Articles, Sections, Schedules and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Sections, Schedules and Attachments.
- 18.7 This Agreement, including any Addenda hereto executed by OWNER and DESIGN PROFESSIONAL and referenced Schedules and Attachments hereto, constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matter set forth herein, and any such prior agreements or understanding shall have no force or effect whatever on this Agreement.
- 18.8 Unless the content of the Agreement otherwise clearly requires, references to the plural include the singular, the term “including” is not limiting and the terms “hereof,” “herein,” “hereunder” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Additionally, the parties hereto acknowledge that they have carefully reviewed this Agreement and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement should not be construed more strongly against any party hereto, regardless of who is responsible for its preparation.
- 18.9 All representations and covenants of the parties shall survive the expiration of this Agreement. Further, all of DESIGN PROFESSIONAL’s representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in this Agreement, will survive final payment, completion, and acceptance of DESIGN PROFESSIONAL’s Services or termination or completion of this Agreement.
- 18.10 DESIGN PROFESSIONAL shall be acting as an independent contractor at all times during the performance of DESIGN PROFESSIONAL’s Services and no provision in this Agreement shall create an employment or agent relationship between the parties.
- 18.11 The remedies granted to OWNER in this Agreement are cumulative and not in limitation of any other rights and remedies of OWNER at law or in equity.

- 18.12 This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 18.13 DESIGN PROFESSIONAL is obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." Further, by execution of this Agreement, DESIGN PROFESSIONAL affirms and represents that it is registered with, and uses, the E-Verify system, and will continue to use the E-Verify system. Compliance with Florida Statutes Section 448.095 includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien.
- 18.14 The following Schedules are incorporated herein by reference:
- 18.14.1 Schedule A - Scope of Services.
 - 18.14.2 Schedule B - Basis of Compensation.
 - 18.14.3 Schedule C - Design Schedule.
 - 18.14.4 Schedule D - Certificate of Insurance.
 - 18.14.5 Schedule E - Rate Schedule.
 - 18.14.6 Schedule F - Truth in Negotiation Certificate.
 - 18.14.7 Schedule G - Staffing Schedule.
 - 18.14.8 Schedule H - Certificate of Substantial Completion.
 - 18.14.9 Schedule I – Certificate of Occupancy.
 - 18.14.10 Schedule J – Certificate of Final Inspection.
 - 18.14.11 Schedule K – MWBE/ LBD/VBE status report.
 - 18.14.12 Schedule L – Total Quality Management Evaluation Process.
 - 18.14.13 Schedule M – Errors and Omissions

ARTICLE 19 – APPLICABLE LAW

- 19.1 This Agreement shall be governed by the laws, rules, and regulations of the State of Florida, without regard to its choice of law provisions, and by the laws, rules, and regulations of the United States when providing services funded by the United States government.
- 19.2 Any litigation between the parties hereto, whether arising out of any claim or arising out of this Agreement or any breach thereof, shall be brought, maintained and pursued only in

the appropriate State courts of the State of Florida; and OWNER and DESIGN PROFESSIONAL each hereby waives and renounces any and all rights and options which they, or either of them, have or might have to bring to maintain any such litigation or action in the Federal Court system of the United States. The exclusive venue of any such litigation or action between the parties hereto shall lie and be only in the appropriate State courts of the State of Florida's Ninth Judicial Circuit in and for Orange County, Florida, and the parties consent and submit to the jurisdiction of any such court. This Agreement is entered into by the parties hereby in Orange County, Florida. **IN ADDITION, THE PARTIES EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY LITIGATION INVOLVING THE PROJECT OR THIS AGREEMENT.**

19.3 In the event of any claim or dispute arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its costs, including reasonable attorneys' fees (including fees for determining the amount of fees due) and court costs at all levels, including, without limitation, during pretrial proceedings, trial, on appeal, in bankruptcy and in post-judgment proceedings. Notwithstanding the foregoing, nothing contained herein shall be construed or interpreted to (a) alter, amend or waive the OWNER's sovereign immunity of the State of Florida, or its agencies, or any defense thereto, beyond the waiver provided in Section 768.28, Florida Statutes; or (b) act or serve as the consent of the OWNER to be sued.

19.4 The parties specifically opt out of the requirements of Chapter 558, Florida Statutes.

**ARTICLE 20 – EQUAL EMPLOYMENT OPPORTUNITY / NONDISCRIMINATION/
MWBE/LDB/VBE**

20.1 In performing all Services to be provided hereunder, DESIGN PROFESSIONAL shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. DESIGN PROFESSIONAL shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: (i) employment, upgrading, demotion or transfer; (ii) recruitment or recruitment advertising; (iii) layoff or termination; (iv) rates of pay or other forms of compensation; and (v) selection for training, including apprenticeship. DESIGN PROFESSIONAL shall post in conspicuous places, available to all employees and applicants for employment notices setting forth the terms of this Equal Employment Opportunity/ Nondiscrimination Clause and stating that all qualified candidates will receive consideration for employment without regard to race, color, religion, sex, or national origin. DESIGN PROFESSIONAL shall comply with OWNER's MWBE, LDB and VBE policies and procedures. DESIGN PROFESSIONAL's MWBE goal for this Project is fifteen percent (15%), DESIGN PROFESSIONAL's LDB goal for this Project is ten percent (10%), DESIGN PROFESSIONAL's VBE goal is three percent (3%). With each invoice request submitted by DESIGN PROFESSIONAL, as a condition precedent to its entitlement to payment, DESIGN PROFESSIONAL shall also submit, on the form attached hereto as Schedule K, a monthly written report to Owner concerning the

status of all payments owed and paid by DESIGN PROFESSIONAL to its various MWBE, LDB and VBE Consultants.

- 20.2 Consistent with Section 287.134, DESIGN PROFESSIONAL, or its Consultant or affiliate who has been placed on the discriminatory vendor list, may not submit a bid, proposal, or reply on a contract to provide any goods or services to OWNER; may not submit a bid, proposal, or reply on a contract with OWNER for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to OWNER; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with OWNER; and may not transact business with any OWNER.

ARTICLE 21 – DISPUTE RESOLUTION

- 21.1 Prior to the initiation of any action or proceeding permitted by this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiation. The negotiation shall be attended by representatives of DESIGN PROFESSIONAL with full decision-making authority and by OWNER's staff person who would make the presentation of any settlement reached during negotiations to OWNER's board for approval. Failing resolution, and prior to the commencement of depositions in any litigation between the parties arising out of this Agreement, the parties shall attempt to resolve the dispute through mediation before an agreed-upon Circuit Court Mediator certified by the State of Florida and selected by Owner. The mediation shall be attended by representatives of DESIGN PROFESSIONAL with full decision-making authority and by OWNER's staff person who would make the presentation of any settlement reached at mediation to OWNER for approval. Should either party fail to submit to mediation as required hereunder, the other party may obtain a court order requiring mediation under Florida Statutes, Section 44.102.

[THIS SECTION WAS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

DESIGN PROFESSIONAL:

_____. a/an _____ corporation

By: _____

Date: _____

[SEAL]

OWNER:

THE SCHOOL BOARD OF ORANGE COUNTY,
FLORIDA, a body corporate existing under the
laws of the State of Florida

By: _____

Date: _____

SCHEDULE A

SCOPE OF SERVICES

1. DESCRIPTION OF PROJECT

1.1. All professional design and construction administration services required to deliver a safe, finished and fully functioning _____ school site. The renovation/construction of _____ facility shall be designed to meet current codes and OCPS Design Guideline and program requirements.

1.2. Specifically, the project scope provides:

1.3. Required services are as outlined herein, with the following modifications and clarifications:

1.3.1. Design shall comply with the OCPS Design Guidelines (DG) current as of _____, and as indicated in the attached Table of Contents.

1.3.2. Project consists of the construction of: _____

2. PROGRAM VERIFICATION

- 2.1. DESIGN PROFESSIONAL shall, if requested by OWNER, assist OWNER with respect to OWNER's selection of a CONSTRUCTION CONTRACTOR for the Project. That assistance shall include, but not be limited to, reviewing and commenting upon proposed candidates, attending meetings and interview sessions with respect to the selection of a CONSTRUCTION CONTRACTOR and assisting in the development and award of the contract between OWNER and CONSTRUCTION CONTRACTOR.
- 2.2. During the various design phases of this Agreement, CONSTRUCTION CONTRACTOR may provide OWNER with value engineering and other services with respect to DESIGN PROFESSIONAL's design. Those services may include the preparation of cost estimates and comments concerning the constructability of the design. DESIGN PROFESSIONAL agrees to incorporate all suggestions or recommendations made by CONSTRUCTION CONTRACTOR with respect to the Project design and approved in writing by OWNER whenever practicable and consistent with good design.
- 2.3. DESIGN PROFESSIONAL shall (a) review OWNER's program documents, including Design Guidelines and Educational Specifications (based on SREF), as well as the SREF itself, in order to ascertain the requirements of the Project, and (b) either meet the design requirements set forth therein or submit a written request for variance, identifying specific exceptions. OWNER may, at its discretion, accept or reject the request for variance. DESIGN PROFESSIONAL shall prepare and submit a report on the program for OWNER's review and approval. DESIGN PROFESSIONAL shall provide a comparison of the program's facilities list to the current design for OWNER's review and approval.
- 2.4. DESIGN PROFESSIONAL shall review OWNER's budget and any applicable cost estimates as compared to OWNER's program documents. DESIGN PROFESSIONAL shall confirm in writing to OWNER whether the Project can be designed and successfully constructed within the limits of OWNER's budget and program constraints.
- 2.5. DESIGN PROFESSIONAL shall consult with the Project Manager, OWNER's Maintenance Department, and other users of the Project to meet design requirements and identify the areas within the facility design offering the greatest potential for elimination of unnecessary costs. Items required by OWNER's Design Guidelines shall not be eliminated as value engineering items.
- 2.6. DESIGN PROFESSIONAL shall prepare site plans that identify future program changes impacting site development and physical expansion with particular emphasis on curriculum, accessibility (including all ADA requirements), growth trends, traffic/pedestrian separation, safety, facility improvements, community joint-use and potential placement of portables.
- 2.7. DESIGN PROFESSIONAL shall consult with CONSTRUCTION CONTRACTOR with respect to (1) CONSTRUCTION CONTRACTOR's development of Project construction

cost estimates, (2) CONSTRUCTION CONTRACTOR's development of an overall Project schedule, and (3) CONSTRUCTION CONTRACTOR's comments and recommendations concerning the Project design. DESIGN PROFESSIONAL shall approve or provide written comments within five (5) business days of receipt of CONSTRUCTION CONTRACTOR's comments and recommendations.

3. PHASE I - SCHEMATIC DESIGN

- 3.1. Based upon the mutually agreed-upon Project program, schedule and budget by OWNER and DESIGN PROFESSIONAL, and after taking into consideration the comments and recommendations from CONSTRUCTION CONTRACTOR, DESIGN PROFESSIONAL shall prepare, Phase I - Schematic Design Documents, as defined in and in compliance with the Design Guidelines for approval by OWNER. OWNER's acceptance of Phase I - Schematic Design Documents in no way relieves DESIGN PROFESSIONAL of its obligation to deliver complete and accurate documents necessary for successful construction of this Project.
- 3.2. DESIGN PROFESSIONAL shall consult with the Project Manager, OWNER's Maintenance Department, and other users of the Project to meet design requirements and identify the areas within the facility design, which offer the greatest potential for the elimination of unnecessary costs. Items required by OWNER's Design Guidelines shall not be eliminated as value engineering items.
- 3.3. DESIGN PROFESSIONAL shall prepare a master site plan that identifies future program changes impacting site development and physical expansion with particular emphasis on curriculum, accessibility (including all ADA requirements), growth trends, traffic separation, safety, facility improvements, community joint-use and potential placement of portables.
- 3.4. DESIGN PROFESSIONAL shall consult with CONSTRUCTION CONTRACTOR with respect to (1) CONSTRUCTION CONTRACTOR's development of Project construction cost estimates, (2) CONSTRUCTION CONTRACTOR's development of an overall Project schedule, and (3) CONSTRUCTION CONTRACTOR's comments and recommendations concerning the Project design. DESIGN PROFESSIONAL shall approve or provide written comments within ten (10) business days of receipt of CONSTRUCTION CONTRACTOR's comments and recommendations.
- 3.5. DESIGN PROFESSIONAL's final Phase I - Schematic Design submittal and presentation shall include, but not be limited to, the Phase I requirements found in the Design Guidelines.
- 3.6. If the Project is at an existing facility, DESIGN PROFESSIONAL shall prepare a minimum of three (3) phasing options, with input from OWNER and CONSTRUCTION CONTRACTOR and as part of Phase I – Schematic Design Phase. This approach to design and construction shall be phased during continued operation of the facility while identifying the best schedule and optimal cost for construction.

- 3.7 DESIGN PROFESSIONAL shall conduct a pre-submittal document review meeting with OWNER's Project Manager prior to submission of the Phase I - Schematic Design Documents. DESIGN PROFESSIONAL shall be required to conduct at least one formal presentation at completion of this phase to demonstrate how OWNER's previously submitted comments have been incorporated into the design documents.
- 3.8 All Phase I - Schematic Design Documents prepared by or for DESIGN PROFESSIONAL are subject to OWNER's review and approval. At completion of the Schematic Design Phase, DESIGN PROFESSIONAL shall submit the Phase I Schematic Design Documents to the Project Manager for review and comment. DESIGN PROFESSIONAL shall respond in writing to the review comments within ten (10) business days of receipt. Responses shall be forwarded directly to OWNER's Project Manager. DESIGN PROFESSIONAL shall revise the Phase I - Schematic Design Documents as required by OWNER in order to obtain OWNER's written approval and authorization to proceed to the Phase II - Design Development Phase.
- 3.9. As part of Basic Services, DESIGN PROFESSIONAL will be required to provide OWNER with a cost estimate as part of the Phase I - Schematic Design Documents that comport with the requirements of the Design Guidelines, together with a written explanation for all variances between that cost estimate and OWNER's approved Project construction budget. The cost estimate format shall be subject to OWNER's approval and may require electronic submission of cost estimate information. If DESIGN PROFESSIONAL's cost estimate or any other estimate prepared by or for Owner based upon the Phase I - Schematic Design Documents indicate that construction costs will exceed OWNER's approved Project construction budget, DESIGN PROFESSIONAL shall revise the Phase I - Schematic Design Documents to bring them within OWNER's approved Project construction budget. DESIGN PROFESSIONAL shall be solely responsible for all costs and expenses which it may incur in revising the Phase I - Schematic Design Documents to bring them within OWNER's approved Project construction budget. If OWNER requires a more detailed construction cost estimate than is specified in the Design Guidelines from DESIGN PROFESSIONAL, such estimate shall be provided as an Additional Service.

4. PHASE II - DESIGN DEVELOPMENT PHASE

After OWNER's review and written approval of the Phase I - Schematic Design Documents and issuance of OWNER's written authorization to proceed, DESIGN PROFESSIONAL shall commence the Phase II - Design Development/60% Submittal phase services, as more specifically defined in the Design Guidelines, and perform the following:

- 4.1. Develop design documents to a level of definitiveness and detail to fix and describe the size and character of the various Project components and each Project discipline and system as may be appropriate for this stage of development, including long lead and special order materials and equipment.

- 4.2. Continue developing the architectural, civil, structural, mechanical, electrical, security, and other discipline's responsibilities that establish the final scope and details for that discipline's Work.
- 4.3. Perform materials research and prepare specifications specific to Project requirements in draft form.
- 4.4. Review and prepare for review and approval by OWNER a summary of all previous requests for information ("RFI"), architect's supplemental information ("ASI"), change orders, building code and other inspection comments, and any and all other comments or information received on any and all previous projects using the prototype design ("Summary"). Once approved by OWNER in writing, the approved Summary shall be incorporated in the Phase II- Design Development/60% Submittal (hereinafter defined).
- 4.5. Identify and properly coordinate the requirements of the various utility services that have an impact upon the Project Design and construction. Drainage investigations and drainage designs shall be coordinated with storm water management district having jurisdiction on the Project.
- 4.6. Consult with CONSTRUCTION CONTRACTOR with respect to (i) CONSTRUCTION CONTRACTOR's development of Project construction cost estimates, (ii) CONSTRUCTION CONTRACTOR's development of an overall Project schedule and (iii) CONSTRUCTION CONTRACTOR's comments and recommendations concerning the Project design. DESIGN PROFESSIONAL shall approve or provide written comments within five (5) business days of receipt of CONSTRUCTION CONTRACTOR's comments and recommendations.
- 4.7. Consult with OWNER's Project Manager, Maintenance Department, and other users of the Project to meet design requirements and identify the areas within the facility design, which offer the greatest potential for the elimination of unnecessary costs. Items required by OWNER's Design Guidelines shall not be eliminated as value engineering items.
- 4.8. Working in concert with CONSTRUCTION CONTRACTOR, generate alternative ideas through "Value Engineering Workshops" with OWNER to provide the identified primary function for the Project.
- 4.9. Evaluate alternative ideas in terms of their feasibility to construct, time and cost.
- 4.10. Develop selected alternative ideas in detail with emphasis on their technical durability, constructability and life cycle cost.
- 4.11. DESIGN PROFESSIONAL's final submittal of the Phase II - Design Development/60% Submittal and presentation shall include, but not be limited to, the Phase II Development Design requirements found in the Design Guidelines (collectively, the "Phase II - Design Development/60% Submittal").

- 4.12 DESIGN PROFESSIONAL shall prepare and submit with Phase II – Design Development/60% Submittal a quality assurance/quality control (QA/QC) itemized checklist, such as “*RediCheck*” interdisciplinary review system or clash detection, confirming that the Phase II – Design Development/60% Submittal is in compliance with OWNER’s program submission requirements and that all Project design disciplines have been coordinated.
- 4.13. DESIGN PROFESSIONAL shall conduct a pre-submittal document review meeting with OWNER’s Project Manager prior to submission of the Phase II - Design Development/60% Submittal. DESIGN PROFESSIONAL, may be required, to conduct at least one presentation at completion of this phase to demonstrate how OWNER’s previously submitted comments were incorporated into the design documents.
- 4.14 All Phase II - Design Development Documents prepared by or for DESIGN PROFESSIONAL are subject to OWNER’s review and approval. At completion of the Design Development/60% Submittal Phase, DESIGN PROFESSIONAL shall submit the Phase II - Design Development/60% Submittal to the Project Manager for review and comment. DESIGN PROFESSIONAL shall respond in writing to the review comments within ten (10) business days of receipt. Responses shall be forwarded directly to OWNER’s Project Manager. DESIGN PROFESSIONAL shall revise the Phase II – Design Development/60% Submittal as required by OWNER in order to obtain OWNER’s written approval and authorization to proceed to the Phase III- Construction Documents Phase.
- 4.15. As part of Basic Services, DESIGN PROFESSIONAL will be required to further develop and update the cost estimate as part of the Phase II – Design Development/60% Submittal and bring to OWNER’s attention in writing any variances between that updated cost estimate and OWNER’s approved Project construction budget. If DESIGN PROFESSIONAL’s updated cost estimate or any other estimate prepared by or for OWNER based upon the Phase II - Design Development Development/60% Submittal indicate that construction costs will exceed OWNER’s approved Project construction budget, OWNER may elect to modify its budget and/or require DESIGN PROFESSIONAL to revise the Phase II - Design Development Development/60% Submittal to bring them within OWNER’s approved Project construction budget. DESIGN PROFESSIONAL shall be solely responsible for all costs and expenses which it may incur in revising the Phase II – Design Development Documents to bring them within OWNER’s approved Project construction budget.

5. PHASE III - CONSTRUCTION DOCUMENTS

After OWNER’s review and written approval of the Phase II - Design Development/60% Submittal, and issuance of OWNER’s written authorization to proceed, DESIGN PROFESSIONAL shall commence the Phase III - Construction Documents services and perform the following:

- 5.1. Prepare final calculations, Construction Documents setting forth in detail each discipline's requirements into a cohesive whole based upon the approved Phase II - Design Development/60% Submittal, consultations with CONSTRUCTION CONTRACTOR, and OWNER's Project Manager.
- 5.2. Prepare final quality assurance/quality control (QA/QC) itemized checklist such as "*RediCheck*" interdisciplinary review system or similar, confirming that the Phase III – Construction Documents submission is in compliance with OWNER's program submission requirements and that all Project design disciplines have been coordinated.
- 5.3 Complete the Project Manual in accordance with the Design Guidelines.
- 5.4. Consult with CONSTRUCTION CONTRACTOR with respect to (1) CONSTRUCTION CONTRACTOR's development of Project construction costs estimates, (2) CONSTRUCTION CONTRACTOR's development of an overall Project schedule and (3) CONSTRUCTION CONTRACTOR's comments and recommendations concerning the Project design. DESIGN PROFESSIONAL shall approve or provide written comments within five (5) business days of receipt of CONSTRUCTION CONTRACTOR's comments and recommendations.
- 5.5. Prepare and file all applications, data and documents required to obtain the approval of all authorities having jurisdiction over the Project, including any applicable storm water management districts and State and local fire marshals as shall be required for this Project. This shall be accomplished at the appropriate time, but not later than the one-hundred percent (100%) completion point of this phase. To ensure the timely approval of all permits necessary for the construction of the Project, including all environmental permits, DESIGN PROFESSIONAL shall advise OWNER and schedule the necessary contacts and liaison with all authorities having permit jurisdiction over the Project, and shall furnish, on a timely basis, such plans, data and information as may be necessary to secure approval of the required permits. DESIGN PROFESSIONAL shall, at no additional cost to OWNER, make all reasonable and necessary revisions to the Construction Documents required to obtain the necessary permit approvals for construction of the Project.
- 5.6. DESIGN PROFESSIONAL shall update the campus master plan drawings to reflect the current as-built condition related to the overall master plan goals.
- 5.7. All Phase III - Construction Documents prepared by or for DESIGN PROFESSIONAL are subject to OWNER's review and approval. At completion of the Construction Documents Phase, DESIGN PROFESSIONAL shall submit the Phase III - Construction Documents to the Project Manager for review and comment. DESIGN PROFESSIONAL shall respond in writing to the review comments within five (5) business days of receipt. Responses shall be forwarded directly to OWNER's Project Manager. DESIGN PROFESSIONAL shall revise the Phase III-Construction Documents as required by OWNER to obtain OWNER's written approval of such documents.

- 5.8. As used herein, the term “**Construction Documents**” refers to all documents to be prepared by and for DESIGN PROFESSIONAL pursuant to this Agreement with respect to the construction of the Project, including all drawings, specifications, bid documents, Project Manual, contract conditions, and addenda thereto. Construction Documents may also be referred to herein as the “Project Documents.”

6. PHASE IV - BUILDING PERMIT PHASE

- 6.1. DESIGN PROFESSIONAL is responsible for cooperating with and providing assistance to OWNER and CONSTRUCTION CONTRACTOR with respect to the applicable building permit application process and the issuance of all necessary and required permits for the Project. Permits required include: FDEP Water Permit, FDEP Wastewater Permit, Orange County E-Plan, and SFWMD Permit modification.
- 6.2. As part of the building permit application package, DESIGN PROFESSIONAL shall provide the Authority Having Jurisdiction (AHJ), the applicable building permit office, with the number of complete sets of signed and sealed Construction Documents and all other bidding documents prepared by DESIGN PROFESSIONAL as indicated in the “Deliverable Schedule” set forth in the Design Guidelines in electronic AutoCAD format. Design Web format (DWF) is acceptable. Each of the drawings and the cover sheet of the Project Manual shall be signed, sealed, and dated by DESIGN PROFESSIONAL per Florida Statutes.
- 6.3. As part of the building permit application process, the Building Code Compliance Official (“BCCO”) shall review and provide comments to DESIGN PROFESSIONAL on the submitted Construction Documents. DESIGN PROFESSIONAL shall revise the Construction Documents by incorporating necessary revisions to address mandatory inclusions made by OWNER’s Facilities Services Design Department, the Project Manager and the office of the BCCO. Unless a longer time is otherwise agreed to in writing by OWNER, DESIGN PROFESSIONAL shall complete such revisions and deliver to OWNER revised Construction Documents within five (5) business days of receipt of the requested revisions. The revised final Construction Documents shall be signed and sealed by DESIGN PROFESSIONAL and re-submitted to the Project Manager in the quantities indicated in the Deliverable Schedule. Once this revised set of Construction Documents is approved by OWNER in writing, it will be deemed to be the final approved set of Construction Documents upon which the construction of the Project is to be based for which the DESIGN PROFESSIONAL shall secure a building permit.

7. PHASE V - BIDDING PHASE

DESIGN PROFESSIONAL shall cooperate with and assist OWNER and CONSTRUCTION CONTRACTOR during the “Bidding Phase” as hereafter provided:

- 7.1. DESIGN PROFESSIONAL shall provide OWNER’s Project Manager with one electronic copy of the Construction Documents and all other bidding documents prepared by or for DESIGN PROFESSIONAL. Dependent upon the Project schedule, the Bidding Phase may

take place prior to or concurrently with code review of the Construction Documents. Accordingly, DESIGN PROFESSIONAL may be required, as directed by OWNER in writing, to provide CONSTRUCTION CONTRACTOR with design documents and other bidding documents prior to one-hundred percent (100%) final approved Construction Documents.

- 7.2. DESIGN PROFESSIONAL shall assist OWNER in reviewing, evaluating and advising OWNER regarding contractor and/or subcontractor bids and CONSTRUCTION CONTRACTOR's final Project schedule and Guaranteed Maximum Price proposal. DESIGN PROFESSIONAL shall attend the pre-bid conferences and shall be responsible for developing and providing to OWNER any addenda to the Construction Documents that result from those conferences. DESIGN PROFESSIONAL shall make a written recommendation to OWNER with respect to OWNER entering an agreement with CONSTRUCTION CONTRACTOR at the amount of the proposed Guaranteed Maximum Price.
- 7.3. DESIGN PROFESSIONAL shall prepare any required addenda to the Construction Documents, submit addenda for building permit approval through CONSTRUCTION CONTRACTOR, and distribute all required copies to all necessary parties as determined by OWNER. DESIGN PROFESSIONAL shall respond to questions or requests for clarifications concerning the Construction Documents submitted in writing by OWNER or CONSTRUCTION CONTRACTOR within five (5) business days of receipt of such questions or requests. Written questions by bidders and subcontractors during bidding shall be answered by DESIGN PROFESSIONAL through the issuance of addenda to the Construction Documents through CONSTRUCTION CONTRACTOR, which addenda, unless OWNER otherwise agrees in writing, shall be prepared and delivered within five (5) business days of receipt of the questions.

8. PHASE VI - CONSTRUCTION PHASE

- 8.1. DESIGN PROFESSIONAL shall keep OWNER apprised of all contacts and/or communications between DESIGN PROFESSIONAL and CONSTRUCTION CONTRACTOR. OWNER shall be copied on all correspondence between DESIGN PROFESSIONAL and CONSTRUCTION CONTRACTOR. All contacts and/or communications between DESIGN PROFESSIONAL and the various trade subcontractors shall be routed through CONSTRUCTION CONTRACTOR.
- 8.2. During the Construction Phase, DESIGN PROFESSIONAL shall provide the following services:
 - 8.2.1. Prepare a list of all shop drawings, product data, samples, warranties, and other submittals required of the CONSTRUCTION CONTRACTOR by any of the Construction Documents or any contract documents between OWNER and the CONSTRUCTION CONTRACTOR and change orders thereto (such Construction Documents, contract documents and change orders referred to hereinafter collectively as "Contract Documents"),

which submittals and list shall be in tabular form and indicate specification section number and section name (CSI Format) per Project Manual Table of Contents.

- 8.2.2. Process, review, respond and distribute shop drawings, product data, samples, substitutions and other submittals required by the Contract Documents within five (5) business days of receipt thereof.
- 8.2.3. Maintenance of a master file of all submittals, including submittal register, made to DESIGN PROFESSIONAL, with duplicates for OWNER. OWNER's copy shall be in electronic/CD format and submitted at time of Substantial Completion.
- 8.2.4. Construction field observation services, consisting of visits to the Project site as frequently as necessary, but not less than once every week, to become familiar with the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. DESIGN PROFESSIONAL shall have the authority and duty to reject any portion of the Work which does not conform to the Contract Documents. Within five (5) business days of each site visit, DESIGN PROFESSIONAL shall provide a written report to the OWNER's Project Manager summarizing the findings and outcome of each site visit, including, without limitation, any defects or deficiencies in the Work, corrections of any such defects or deficiencies, and any other details reasonably required by OWNER. This field observation requirement shall also apply to Consultants of DESIGN PROFESSIONAL at appropriate construction points.
- 8.2.5. DESIGN PROFESSIONAL, as representative of OWNER during construction, shall advise and consult with OWNER through its on-site observations of the Work in progress and field checks of materials and equipment, DESIGN PROFESSIONAL shall use best efforts to provide protection for OWNER against defects and deficiencies in the Work of CONSTRUCTION CONTRACTOR and the various trade subcontractors of CONSTRUCTION CONTRACTOR.
- 8.2.6. Prior to the first Application for Payment, DESIGN PROFESSIONAL shall review CONSTRUCTION CONTRACTOR's Schedule of Values and recommend adjustments. Based on such observations at the site and on the Applications for Payment submitted by CONSTRUCTION CONTRACTOR, DESIGN PROFESSIONAL shall recommend the amount owing to CONSTRUCTION CONTRACTOR and shall execute and issue the Certificates of Payment initially completed by CONSTRUCTION CONTRACTOR for such amounts. The issuance of Certificate of Payment shall constitute a representation by DESIGN PROFESSIONAL to OWNER that: (i) the Work has progressed to the

point indicated; (ii) that to the best of DESIGN PROFESSIONAL's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents subject to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate of Payment; and (iii) CONSTRUCTION CONTRACTOR is entitled to payment in the amount certified.

- 8.2.7. DESIGN PROFESSIONAL shall review claims for extra compensation, or extensions of time from CONSTRUCTION CONTRACTOR, make written recommendations to OWNER within five (5) business days of receipt of such claims concerning validity, and prepare responses for OWNER.
- 8.2.8. DESIGN PROFESSIONAL shall be, in the first instance, the interpreter of the requirements of the Construction Documents. DESIGN PROFESSIONAL shall render written opinions on all claims of CONSTRUCTION CONTRACTOR relating to the execution and progress of the Work and on all other matters or questions related thereto. DESIGN PROFESSIONAL's decisions in matters relating to artistic effect shall be final if consistent with the intent of the Construction Documents, subject to OWNER's written approval. DESIGN PROFESSIONAL shall review for comment or written approval any and all proposal requests, supplemental drawings and information, proposed substitutions, value engineering suggestions and proposed Change Orders to OWNER's contract with CONSTRUCTION CONTRACTOR.
- 8.2.9. Prepare, reproduce and distribute supplemental drawings, specifications and interpretations in response to requests for clarification by CONSTRUCTION CONTRACTOR or OWNER as required by construction exigencies. DESIGN PROFESSIONAL's response to any such request must be received by OWNER and CONSTRUCTION CONTRACTOR within five (5) business days. DESIGN PROFESSIONAL will review and respond to all submittals from CONSTRUCTION CONTRACTOR, including shop drawings, within a reasonable period of time so as not to delay the progress of the Work, but in no event, more than five (5) business days, unless OWNER expressly agrees otherwise in writing. Review of CONSTRUCTION CONTRACTOR's submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of CONSTRUCTION CONTRACTOR as required by the Contract Documents. DESIGN PROFESSIONAL's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by DESIGN PROFESSIONAL, of any construction means,

methods, techniques, sequences or procedures. DESIGN PROFESSIONAL's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

- 8.2.10. DESIGN PROFESSIONAL shall have authority to reject Work which does not conform to the Construction Documents. Whenever, in its reasonable opinion, DESIGN PROFESSIONAL considers it necessary or advisable to insure the proper implementation or the intent of the Construction Documents, subject to OWNER's prior written approval, DESIGN PROFESSIONAL will have authority to require special inspection or testing of any Work in accordance with the provisions of the Construction Documents whether or not such Work be then fabricated, installed or completed.
- 8.2.11. DESIGN PROFESSIONAL shall review and provide written comment upon all Change Orders requests by CONSTRUCTION CONTRACTOR, as well as any cost estimate associated with a Change Order request, prepared by CONSTRUCTION CONTRACTOR. Upon written agreement by OWNER, DESIGN PROFESSIONAL shall prepare and provide Change Orders or Construction Change Directives to OWNER for approval and issuance to CONSTRUCTION CONTRACTOR and revise the Construction Documents accordingly.
- 8.2.12. DESIGN PROFESSIONAL shall submit to the applicable building permit office the number of sets of drawings and/or documents reflecting the approved changes in the Work as may be required by that office. Code compliance issues must be approved by the applicable building permit office in writing prior to inspection of the subject Work.
- 8.2.13. DESIGN PROFESSIONAL shall review the Project schedule, subcontractor construction schedule(s), schedule(s) of shop drawing submittals and Schedule(s) of Values prepared by CONSTRUCTION CONTRACTOR and advise and/or recommend in writing to OWNER concerning their acceptability.
- 8.2.14. DESIGN PROFESSIONAL and Consultants shall provide weekly visits to the Project to observe the work in accordance with the specifications of the Project and Construction Documents. All visits to the Project shall be conducted by a qualified team member of the DESIGN PROFESSIONAL or Consultants in the respective disciplines. DESIGN PROFESSIONAL shall cause DESIGN PROFESSIONAL'S Consultants or the sub-consultants for each discipline assigned to the Consultant to submit to OWNER a monthly summary report in writing with digital photographic documentation of all weekly visits to the Project. The report shall include a narrative status of all related activities, all deficiencies, all non-conforming items, and status of previously reported items of non-

conformance and deficiencies. DESIGN PROFESSIONAL and Consultants shall include in their base fee attendance at all weekly meetings and shall cause all disciplines to attend weekly meetings related to the activities of that discipline and include weekly and monthly reports. Typical meetings shall include but not be limited to preconstruction conferences, progress meetings, job conferences, pre-closeout meetings and other Project-related meetings, and provide the official meeting minutes for these meetings. DESIGN PROFESSIONAL's official meeting minutes will be in addition to any meeting agenda, or meeting minutes prepared by CONSTRUCTION CONTRACTOR. The Project site visit shall be a separate and distinct visit to the Project and attendance at weekly meetings shall not be in lieu of or included with the report outlining the weekly visits to the Project.

- 8.2.15. Receive notice from CONSTRUCTION CONTRACTOR if other work related to the Project by OWNER's own forces, by utility owners, or by other direct contractors will involve additional expense to CONSTRUCTION CONTRACTOR or require additional time and advise OWNER in writing.
- 8.2.16. Receive copies of all accident reports submitted by CONSTRUCTION CONTRACTOR and advise OWNER.
- 8.2.17. Advise OWNER of facts known to DESIGN PROFESSIONAL which may constitute an event of default on the part of CONSTRUCTION CONTRACTOR under the Contract Documents, and advise and make recommendations in writing to OWNER with respect to the remedies available to OWNER under the Contract Documents.
- 8.2.18. Review and comment upon, without assuming any liability for, CONSTRUCTION CONTRACTOR's quality control program.
- 8.2.19. Review the Work to confirm that the plans and facility comply with the current Florida Building Code, and maintain a copy of the current Florida Building Code at its office for review by CONSTRUCTION CONTRACTOR. Report in writing any discrepancies observed or noted to OWNER. The applicable building permit office will prepare and issue the Certificate of Occupancy at the appropriate time to CONSTRUCTION CONTRACTOR, the form of which is attached as Schedule I.
- 8.2.20. DESIGN PROFESSIONAL shall manage OWNER's Project closeout process. Upon notice from CONSTRUCTION CONTRACTOR, and with the assistance of OWNER, DESIGN PROFESSIONAL shall conduct the Substantial Completion inspection and if appropriate issue the Certificate of Substantial Completion on the form attached as Schedule J. Review and comment upon, and supplement as appropriate, the punch

lists to be prepared by CONSTRUCTION CONTRACTOR. Notify CONSTRUCTION CONTRACTOR in writing of Work not complete by providing the final punch list to CONSTRUCTION CONTRACTOR within seven (7) calendar days after CONSTRUCTION CONTRACTOR has achieved Substantial Completion.

- 8.2.21. Upon notice from CONSTRUCTION CONTRACTOR, conduct final inspections and assist OWNER in final acceptance of Project. If appropriate, issue the Certificate of Final Inspection on the form attached as Schedule J.
- 8.2.22. Evaluate all testing results and make recommendations to OWNER in writing.
- 8.2.23. Assist OWNER in the establishment of programs of operation and maintenance of the physical plant and equipment.
- 8.2.24. Assist OWNER and CONSTRUCTION CONTRACTOR in the training of the facility operation and maintenance personnel with respect to the proper operations, schedules, procedures and inventory controls for the various Project equipment and systems. Such assistance shall include assisting OWNER in arranging for and coordinating the instruction and training on operations and maintenance of the Project's equipment and systems in conjunction with the various manufacturer representatives. Further, DESIGN PROFESSIONAL is to attend all such training sessions, unless otherwise consented to by OWNER in writing.
- 8.2.25. Review for compliance with CONSTRUCTION CONTRACTOR's obligation under the Contract Documents, all operation and maintenance manual submittals, prior to submittal to OWNER.
- 8.2.26. Schedule via OWNER and visit with OWNER and CONSTRUCTION CONTRACTOR the facility at initial occupancy and at six (6) and eleven (11) months after issuance of the Certificate of Substantial Completion. During each facility visit, DESIGN PROFESSIONAL shall observe, troubleshoot and advise in the operation of building systems. This shall not relieve DESIGN PROFESSIONAL of its obligation to make other visits to the facility based on need should specific issues arise.
- 8.2.27. After CONSTRUCTION CONTRACTOR provides DESIGN PROFESSIONAL with its marked-up "As-Built" drawings and specifications, DESIGN PROFESSIONAL will revise the final approved Construction Documents to incorporate all "As-Built" information contained in CONSTRUCTION CONTRACTOR's marked-up "As-Built" drawings and specifications, as well as to reflect all addenda to the Construction Documents, contract changes and field changes (sometimes

referred to herein as the “**Record Documents**”). DESIGN PROFESSIONAL shall provide OWNER with one (1) electronic copy on compact disk (CD) of the Record Documents, two sets of the conformed, signed and sealed drawings and prints, and two sets of the conformed Project Manual/Specifications signed and sealed.

7.2.27.1 The electronic copy on CD of the Record Documents shall be provided in AutoCAD.dwg format, “purged and bound”, and compatible with OWNER’s system.

8.2.27.2 Throughout the Construction Phase, DESIGN PROFESSIONAL shall review CONSTRUCTION CONTRACTOR’s marked-up “As-Built” drawings and Project Manual/Specifications, on a regular basis, and at least monthly, prior to certification of CONSTRUCTION CONTRACTOR’s monthly payment application.

8.2.28. Consult with, and recommend solutions in writing to, OWNER during the duration of warranties in connection with inadequate performance of equipment, materials or systems under warranty.

8.2.29. Submit a facility and equipment review schedule to OWNER at the time of Substantial Completion. Perform warranty walk-through reviews of facilities and equipment prior to expiration of warranty period(s) to ascertain adequacy of performance, materials, systems and equipment. Submit a written report to OWNER. Warranty walk-through visits shall be performed at 6 month, 11 months and 23 months post facility opening.

8.2.30. Document noted defects or deficiencies in writing and assist OWNER in preparing instructions to CONSTRUCTION CONTRACTOR for correction of noted defects.

8.2.31. DESIGN PROFESSIONAL, upon final acceptance of the Project, shall issue and sign the Certificate of Final Inspection on the form attached as Schedule J.

9. PHASE VII - DELIVERABLES

DESIGN PROFESSIONAL shall furnish documents in type, format, version and quantities indicated in the Design Guidelines.

10. PHASE VIII - SERVICES RELATING TO ALL PHASES

10.1. DESIGN PROFESSIONAL’s design documents shall be consistent with OWNER’s program (including Educational Specifications and Design Guidelines) at all phases of design unless expressly authorized otherwise in writing by OWNER.

- 10.2. DESIGN PROFESSIONAL shall submit to OWNER design notes and computations to document the design conclusions reached during the development of the Project design as requested by OWNER in writing.
- 10.2.1. The design notes and calculations shall include, but not be limited to, the following data to the extent applicable based on the project scope:
- 10.2.1.1. Design criteria used for the Project;
 - 10.2.1.2. Lighting calculations;
 - 10.2.1.3. Structural calculations;
 - 10.2.1.4. Drainage calculations;
 - 10.2.1.5. HVAC calculations;
 - 10.2.1.6. Security and communications calculations;
 - 10.2.1.7. Calculations as required by provisions of the Florida Energy Conservation Standards Act (Department of Community Affairs), latest revision;
 - 10.2.1.8. Thermal Efficiency Standards (Florida Energy Efficiency Code for Building Construction, Department of Community Affairs, F.S. 552.900)
 - 10.2.1.9. Life Cycle Costs (Florida Administrative Code and F.S. 236.26)
 - 10.2.1.10. Calculations showing probable cost comparisons of various alternatives considered;
 - 10.2.1.11. Documentation of decisions reached resulting from meetings, telephone conversations or site visits; and
 - 10.2.1.12. Other Project related correspondence as appropriate.
- 10.3. All drawing documents for the Project shall be accurate, legible, complete in design, suitable for bidding purposes and in conformance to OWNER's CAD Standards found in the Design Guidelines. Documents shall be furnished in accordance with the Deliverable Schedule.
- 10.4. At the time this Agreement is executed, DESIGN PROFESSIONAL has reviewed the form of contract to be entered into between OWNER and CONSTRUCTION CONTRACTOR. In addition to all other Basic Services to be provided by DESIGN PROFESSIONAL hereunder, DESIGN PROFESSIONAL agrees that any other services noted within the contract between OWNER and CONSTRUCTION CONTRACTOR to be provided by DESIGN PROFESSIONAL are hereby incorporated by reference into the Basic Services to be provided by DESIGN PROFESSIONAL hereunder. Any written and approved changes to the form of contract between OWNER and CONSTRUCTION CONTRACTOR from that reviewed by DESIGN PROFESSIONAL, which would increase the scope of Basic Services otherwise required of DESIGN PROFESSIONAL, will entitle DESIGN PROFESSIONAL to an equitable adjustment to the Agreement for such Additional Services, if DESIGN PROFESSIONAL requests such adjustment in writing in accordance with the requirements of this Agreement.

- 10.5. OWNER in no way obligates itself to check DESIGN PROFESSIONAL's deliverables or other work product, and further, is not responsible for maintaining the Design Schedule.
- 10.6. Nothing in this Agreement is intended or shall be construed to require OWNER to determine the adequacy, accuracy or sufficiency of the design, the Project Documents or DESIGN PROFESSIONAL's Services, which are each DESIGN PROFESSIONAL's responsibility. OWNER's review, inspection, acceptance, or payment for any of DESIGN PROFESSIONAL's services shall not relieve DESIGN PROFESSIONAL of any of its duties, obligations or responsibilities under this Agreement or constitute acceptance of services that fail to conform to the requirements of this Agreement.
- 10.7. DESIGN PROFESSIONAL acknowledges that OWNER has established a construction budget of _____ and ____/100 Dollars (\$_____), which may be subject to adjustments, as approved by OWNER in writing. DESIGN PROFESSIONAL agrees to perform professional services for the Project, in accordance with the terms and conditions set forth herein, for design of the Project at a total construction cost to OWNER which does not exceed the above noted OWNER's budget. Evaluations of the Project budget and any estimates of construction cost prepared, reviewed or agreed to by DESIGN PROFESSIONAL represent DESIGN PROFESSIONAL's best judgment as a design professional familiar with the construction industry. DESIGN PROFESSIONAL cannot and does not guarantee that bids or negotiated prices will not vary from any estimate of construction cost or evaluation prepared, reviewed or agreed to by DESIGN PROFESSIONAL. If the Bidding Phase has not commenced within one hundred eighty (180) days after OWNER has approved the Construction Documents, through no fault of DESIGN PROFESSIONAL, OWNER's budget for the cost of construction shall be adjusted to reflect changes in the general level of prices for goods and services in the applicable construction market. Notwithstanding anything herein to the contrary, DESIGN PROFESSIONAL shall revise and modify the Construction Documents and assist in the rebidding of any portion of the Work at no additional cost to OWNER, if CONSTRUCTION CONTRACTOR's Guaranteed Maximum Price proposal exceeds OWNER's construction budget, as said budget may be modified by OWNER, as provided for herein. Further, DESIGN PROFESSIONAL shall use best efforts to avoid delays in the Project schedule associated with such revisions and modifications and shall actively seek to identify areas where adjustments to items within the Project schedule may be adjusted in order to avoid delays. All such revisions and modifications of the Construction Documents shall be subject to the review and written approval of OWNER.
- 10.8. DESIGN PROFESSIONAL shall be responsible for obtaining and thoroughly and carefully reviewing all surveys and geological reports obtained by OWNER with respect to the Project. DESIGN PROFESSIONAL's design documents shall be consistent and coordinated with the information set forth in all such surveys and geological reports. In the event DESIGN PROFESSIONAL has any questions or concerns about the contents of any such surveys or reports, DESIGN PROFESSIONAL shall notify OWNER in writing within 7 days of DESIGN PROFESSIONAL's receipt of any such surveys or geological

reports. DESIGN PROFESSIONAL and OWNER will attempt to mutually resolve any such questions or concerns.

Exhibit 1

OCPS Design Guidelines as of _____
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SCHEDULE B

BASIS OF COMPENSATION

1. MONTHLY STATUS REPORTS:

- 1.1. DESIGN PROFESSIONAL shall submit to OWNER, not later than the tenth (10th) day of each month, a progress report reflecting the PROJECT design and construction status, in terms of the total work effort estimated to be required for the completion of the Services, as of the last day of the preceding month. The report shall show all work items, the percentage complete of each item, the percentage of total work effort represented by each item, and the percentage of total work effort completed.
- 1.2. All monthly status reports and invoices shall be mailed to the attention of OWNER's Project Manager, _____, 6501 Magic Way, Building 200, Orlando, Florida 32809.

2. COMPENSATION TO DESIGN PROFESSIONAL:

- 2.1. For the BASIC SERVICES provided for in this Agreement, OWNER agrees to pay and make monthly payments to DESIGN PROFESSIONAL in accordance with the terms as stated in the table below. Payments should be made in accordance with the following Schedule; however, in addition to any other right under this Agreement, in the event design phase approvals are made by OWNER containing mandatories, provisos, or similar conditions, ten percent (10%) of DESIGN PROFESSIONAL's document approval payment will be withheld by OWNER until such mandatories, provisos, or similar conditional remarks have been satisfactorily resolved with OWNER by DESIGN PROFESSIONAL.

[THIS SECTION INTENTIONALLY LEFT BLANK.]

Item	LUMP SUM FEE FOR:	ORIGINAL FEE	PAYMENT SCHEDULE
1	Program / Scope Verification Phase		Upon Completion of Phase
2	Phase I – Schematic Design		Upon Approval of Documents
3	Phase II –Design Development		Upon Approval of Documents
4	Phase III – Construction Document		Upon Approval of Documents
5	Building Permitting		Upon Issuance of Building Permit
6	Bidding		Upon Approval of Construction Notice to Proceed
7	Construction Phase		Monthly increments in proportion to payments made to Contractor.
8	Electronic Record Documents		Upon Approval of Documents
9	11-Month Warranty Inspection		Upon Completion of Warranty Period
	SUB-TOTAL (Items 1-9)	\$0.00	
10	Not-To-Exceed Fee for Reimbursable		Upon Approval
	TOTAL FEE (Total Items 1-10)	\$0.00	

2.1.1 OWNER reserves the right, in its sole and absolute discretion, to advance the date of payment of any of the foregoing items. Any advance payment, however, shall not be a waiver of (i) any of OWNER’s rights in connection with other payments to DESIGN PROFESSIONAL, or (ii) any other right or remedy that OWNER has under this, at law or in equity.

2.1.2 “Reimbursable Expenses” refers to necessary and reasonable expenses incurred or paid by DESIGN PROFESSIONAL in connection with DESIGN PROFESSIONAL’S performance of the Services at its direct cost with no markup. For the purposes hereof, “Reimbursable Expenses” shall be deemed to include the following: (a) Cost for reproducing documents that exceed the number of documents described in this Agreement; (b) Mileage outside of Orange County approving in writing by OWNER; (c) all necessary fees paid by DESIGN PROFESSIONAL to governmental authorities having jurisdiction over the Project for securing required approval of the Project or any portion of

the Project; and (d) other Reimbursable Expenses incurred only after obtaining OWNER's prior written approval, which approval may be withheld in Owner's sole discretion. DESIGN PROFESSIONAL shall bear and pay all overhead and other expenses, except for the Reimbursable Expenses defined and specified above, incurred by Design Professional in the performance of the Services.

- 2.2. The fees noted in Section 2.1. shall constitute the lump sum amount of _____ and ____/100 Dollars (\$_____) to be paid to DESIGN PROFESSIONAL for the performance of the Basic Services and the Not-To-Exceed amount of _____ and ____/100 Dollars (\$_____) for Reimbursable Expenses.
- 2.3. For the Additional Services provided for under Article 2 of the Agreement, OWNER agrees to pay DESIGN PROFESSIONAL a negotiated total fee based on the services to be provided. The negotiated fee shall be calculated using the billable rates specified in Schedule G, which rates shall be fixed for the duration of the Project. There shall be no overtime pay on Additional Services without OWNER's prior written approval.
- 2.4. The compensation provided for under Sections 2.1 of this Schedule B, shall be the total and complete amount payable to DESIGN PROFESSIONAL for the services to be performed under the provisions of this Agreement, and shall include the cost of all materials, equipment, supplies and out-of-pocket expenses incurred in the performance of all services.

3. SCHEDULE OF PAYMENTS:

- 3.1. DESIGN PROFESSIONAL shall submit, with each of the monthly status reports provided for under Section 1.1 of this Schedule B an invoice for fees earned in the performance of Basic Services and Additional Services. Notwithstanding anything herein to the contrary, DESIGN PROFESSIONAL shall submit no more than one invoice per month for all fees earned that month for both Basic Services and Additional Services.
- 3.2. All invoices shall be accompanied by: (i) an itemized statement of Reimbursable Expenses incurred for such month, (ii) waivers and releases of lien for payments received in form and substance reasonably acceptable to acceptable to OWNER, and (iii) such other information as OWNER shall reasonably require to enable OWNER to verify and evaluate the services completed and Reimbursable Expenses incurred in accordance with the terms and conditions of this Agreement. Invoices not properly prepared (mathematical errors, billing not reflecting actual work done, no signature, etc.) shall be returned to DESIGN PROFESSIONAL for correction. Invoices must indicate the Agreement Number, the Purchase Order Number, and the Project Site description (School Name).
- 3.3. In the event modifications to the Construction Documents are required in order to obtain any necessary permit, ten percent (10%) of DESIGN PROFESSIONAL's Construction Documents Approval payment will be withheld by OWNER until all mandates,

stipulations, or similar conditional remarks have been satisfactorily incorporated and the Construction Documents are fully approved.

- 3.4 Payments for Additional Services of DESIGN PROFESSIONAL as defined in Article 2 hereinabove as a multiple of direct personnel expense, and for reimbursable expenses will be made monthly upon presentation of a detailed invoice with supporting documentation.
- 3.5 DESIGN PROFESSIONAL agrees that, with respect to any Consultant to be utilized by DESIGN PROFESSIONAL, DESIGN PROFESSIONAL shall be limited to a maximum markup of five percent (5%) on the fees and expenses associated with such Consultant.
- 3.6 The fee specified in the chart in Section 2.1, Item 7, for Construction Phase includes compensation for all Services required of DESIGN PROFESSIONAL during the Construction Phase, including without limitation Services addressed in Schedule "A" Sections 8.2.1 – 8.2.21. The Construction Phase currently is anticipated to commence on _____, reach substantial completion on or around _____, and reach final completion on or around _____.

SCHEDULE C

DESIGN SCHEDULE

See attachment

SCHEDULE D

CERTIFICATE OF INSURANCE

Attached Certificate of Insurance is to comply with Article 10 of the Design Agreement and the following requirements:

- I. The following language is to be added in the Description Block:

“Project Name:

The School Board of Orange County Florida, its board members, employees and representatives are included as Additional Insured with respect to General and Auto Liability Coverage should apply as primary and non-contributory. A waiver of subrogation in favor of the additional insured applies on the general liability, auto liability and workers’ compensation”.

- II. The Certificate Holder is to be shown as:

The School Board of Orange County, Florida
445 W. Amelia Street
Orlando, Florida 32801

SCHEDULE E
RATE SCHEDULE

See attached

SCHEDULE F

TRUTH IN NEGOTIATION CERTIFICATE

In compliance with the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, _____, hereby certifies that wage rates and other factual unit costs supporting the compensation for its services to be provided under this Agreement, concerning _____ **Project**, are accurate, complete and current as of the time of contracting.

DESIGN PROFESSIONAL:

_____ a/an _____ corporation

By: _____

Date: _____

SCHEDULE G
STAFFING SCHEDULE

See attached

SCHEDULE H

CERTIFICATE OF SUBSTANTIAL COMPLETION

SCHEDULE I

CERTIFICATE OF OCCUPANCY

Department of Education Form OEF 110B is incorporated by reference (*version effective November 2012, or latest version in effect at time of final inspection*).

SCHEDULE J

CERTIFICATE OF FINAL INSPECTION

Department of Education form OEF 209 is incorporated by reference (*version effective November 2012, or latest version in effect at time of final inspection*).

SCHEDULE K

MWBE/LDB/VBE STATUS REPORT

SCHEDULE L

TOTAL QUALITY MANAGEMENT PROCESS & EVALUATION FORM

Vendor Performance Letter
Architect/Engineer and Consultant (A/E) Services

PURPOSE:

This standard procedure establishes the process for evaluating and notifying DESIGN PROFESSIONAL concerning their performance on OWNER'S projects through the planning, design, construction and closeout phases. The evaluations will be the responsibility of OWNER'S Project Manager (PM). The PM will develop, evaluate, distribute and implement the evaluations with the DESIGN PROFESSIONAL as needed and/or as set forth herein.

On an annual basis or at the completion of certain deliverables the PM will provide feedback to the DESIGN PROFESSIONAL based on the attached Architect-Engineer/Consultant Performance Evaluation Form.

If DESIGN PROFESSIONAL'S performance is deemed unsatisfactory by the PM, the PM will issue a written notification to the DESIGN PROFESSIONAL setting forth the matter causing the unsatisfactory. The DESIGN PROFESSIONAL shall respond with their proposed resolution within ten (10) business days from the date of the notification. The PM will provide a copy of the notification to the Facilities & Construction Contracting Department for inclusion in the contract file and consideration by professional services selection committees evaluating firms for future work.

The PM will provide a Final Evaluation to DESIGN PROFESSIONAL that will consider the Errors and Omissions items discovered during the project. The PM will maintain a log of all Errors and Omissions items and the corresponding costs or damages on a project by project basis. The PM will evaluate the Errors and Omissions costs or damages as a percentage of the total cost of construction of the related items, divided by the total cost of the entire construction. The average of the A/E Errors and Omissions percentage on all the projects the DESIGN PROFESSIONAL has completed for OCPS will be reported to professional services selection committees that are considering the DESIGN PROFESSIONAL for selection for future work.

**FACILITIES SERVICES
ARCHITECT-ENGINEER / CONSULTANT
PERFORMANCE EVALUATION**

NAME AND ADDRESS OF FIRM:	PROJECT DESCRIPTION AND LOCATION:	
	PROJECT NUMBER:	CONTRACT NUMBER:
TYPE OF REPORT: (CHECK ONE) <input type="checkbox"/> COMPLETION OF PROGRAM VERIFICATION <input type="checkbox"/> COMPLETION OF SCHEMATIC DESIGN <input type="checkbox"/> COMPLETION OF DESIGN DEVELOPMENT <input type="checkbox"/> COMPLETION OF CONFORMED DOCUMENTS <input type="checkbox"/> COMPLETION OF CONSTRUCTION <input type="checkbox"/> OTHER	REPORT NUMBER:	DATE OF REPORT:
OFFICE RESPONSIBLE FOR		
SELECTION OF FIRM: <input type="checkbox"/> RFQ / CCNA <input type="checkbox"/> CONTINUING CONTRACT <input type="checkbox"/> OTHER	NEGOTIATION/AWARD OF CONTRACT:	ADMINISTRATION OF CONTRACT:
CONTRACT DATA		
TYPE OF WORK: <input type="checkbox"/> NEW/REPLACEMENT <input type="checkbox"/> COMPREHENSIVE <input type="checkbox"/> DISTRICTWIDE CAPITAL <input type="checkbox"/> OTHER	TYPE OF CONTRACT: <input type="checkbox"/> FIXED PRICE <input type="checkbox"/> COST REIMBURSEMENT <input type="checkbox"/> OTHER (SPECIFY)	

PROJECT COMPLEXITY <input type="checkbox"/> DIFFICULT <input type="checkbox"/> ROUTINE <input type="checkbox"/> SIMPLE	INITIAL FEE: \$		AMOUNT AMENDMENTS: \$
CONSTRUCTION CONTRACT DATA			
CONTRACT COMPLETION DATE:		CONSTRUCTION MODIFICATIONS \$	

PERFORMANCE EVALUATION

PERFORMANC E ELEMENTS	UNSATISFACTOR Y	SATISFACTOR Y	OUTSTANDIN G
Quality of Product			
Timely Performance			
Coordination of Disciplines			
Meeting Cost Limitations			
Cooperativeness & Responsiveness			
Conformance to OCPS Standards & Design Criteria			
Timeline & Response to Review/Code Comments			
Overall Performance			
RFI & Submittal Management			
Punch List & Closeout Management			

Quality Assurance Plan

See attachment

SCHEDULE M

ERRORS, CONFLICTS, AND OMISSIONS

Pursuant to paragraphs 1.6 and 1.15 of the Agreement, DESIGN PROFESSIONAL shall be liable for any additional costs incurred by OWNER that result from errors, conflicts and/or omissions in the Project Documents prepared or furnished by DESIGN PROFESSIONAL. This schedule prescribes the process by which responsibility for errors, conflicts and/or omissions shall be resolved. DESIGN PROFESSIONAL and OWNER agree that any conflicts in the Project Documents are and shall be considered and treated as design errors. The term “errors” as used herein this document shall include conflicts and be used interchangeably.

When items arise that are deemed by OWNER or the Project Manager (PM) to be design errors or omissions resulting in additional costs, the PM will notify the DESIGN PROFESSIONAL of such determination, within a reasonable time such determination is found. If the DESIGN PROFESSIONAL disagrees regarding the determination or the cost of the item, the PM will solicit and consider information provided by the DESIGN PROFESSIONAL that the DESIGN PROFESSIONAL believes may rebut the PM’s determination. Subsequently, the PM will provide the DESIGN PROFESSIONAL’s rebuttal to the OWNER accompanied with the PM’s recommendation for the OWNER’s determination.

OWNER will review the information from the DESIGN PROFESSIONAL and the PM’s recommendation regarding the determination and costs. Prior to rendering a decision that rejects any rebuttal from the DESIGN PROFESSIONAL, OWNER may, but is not obligated to meet with both the DESIGN PROFESSIONAL and the PM. Following review of all information set forth above, OWNER, at its sole discretion, will render a decision regarding the errors and/or omission(s) and related additional costs which shall be deemed final.

When OWNER incurs additional costs due to DESIGN PROFESSIONAL’s errors or omissions, DESIGN PROFESSIONAL shall reimburse OWNER for such costs. For errors, including conflicts, the amount to be assessed shall be equal to one hundred percent (100%) of the costs borne by OWNER for correction of incorrectly designed work. For omissions where the construction costs are typically first costs that would have otherwise been incurred, no reimbursement is due unless the omission results in other costs (e.g., delay and acceleration costs) that the OWNER incurs as a result of the omission. The PM will provide the details of such costs to DESIGN PROFESSIONAL and the OWNER. The OWNER or PM will initially be responsible for the identification and amount of delay and acceleration costs. Such costs will be reviewed and determined in accordance with the procedures set forth above.

Once a final decision has been rendered and the required reimbursement determined, the PM will notify OWNER’s Facilities & Construction Contracting (F&CC) office. F&CC will issue a claim notice to the DESIGN PROFESSIONAL informing them that the assessed costs are due and will be offset against any sums otherwise due to the DESIGN PROFESSIONAL under any existing contracts with OWNER, unless reimbursement is fully paid by DESIGN PROFESSIONAL to OWNER within ten (10) business days of the claim notice. In the event DESIGN PROFESSIONAL fails to reimburse OWNER within this ten (10) day period, OWNER shall have

the express authority to deduct the amount of the reimbursement costs from sums otherwise due from OWNER to DESIGN PROFESSIONAL, regardless of whether such sums are related to the same project or contract under which the DESIGN PROFESSIONAL's errors and omissions occurred. The offset of the cost from sums otherwise due to DESIGN PROFESSIONAL shall occur with the first payment due to DESIGN PROFESSIONAL following the ten (10) day period for payment, unless otherwise determined by OWNER. Failure to compensate OWNER shall be considered a breach of the agreement and shall be reported to future professional services selection committees.

If the DESIGN PROFESSIONAL disagrees with the OWNER's decision regarding either the classification of the item as an error or omission or the amount due OWNER, the DESIGN PROFESSIONAL has the right to pursue dispute resolution under Article 21 of the DESIGN PROFESSIONAL's contract with OWNER. DESIGN PROFESSIONAL must initiate the dispute resolution process therein within twenty-one (21) days of the date the claim notice is issued by F&CC. If the DESIGN PROFESSIONAL fails to pursue dispute resolution within such time, the DESIGN PROFESSIONAL waives any right to contest the OWNER or PM's findings, and expressly consents to the offset of any amounts due pursuant to the claim notice.