

AGREEMENT BETWEEN OWNER AND PROFESSIONAL

(CONTINUING SERVICES)

This Agreement between Owner and Professional (this “**Agreement**”) is effective as of the date last signed below (the “**Effective Date**”), by and between The University of Central Florida Board of Trustees (“**Owner**”) and (**Name of A/E Firm, including legal status and FEIN**), (“**Professional**”), which is authorized to do business in the State of Florida. Owner and Professional shall from time to time hereinafter be referred to individually as a “**Party**” and together as the “**Parties**.”

RECITALS

WHEREAS, Owner solicited statements of qualifications from interested professionals for continuing architectural/engineering services at The University of Central Florida (the “**Project**”); and

WHEREAS, Professional represents that it has expertise in the type of architectural and/or engineering services that will be required for the Project; and

WHEREAS, the projects implemented under this Agreement are limited to repairs, renovations, modifications, alterations, and new construction projects not to exceed \$2,000,000 in construction cost, and planning/study activities which not to exceed \$200,000 in fees; and

WHEREAS, Owner intends to implement the Project using either a Construction Manager or General Contractor (hereinafter referred to as “**Contractor**”), as determined in Owner’s sole discretion; and

WHEREAS, Owner and Professional desire to enter into this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by reference, the terms and conditions contained herein and other good and valuable consideration, the receipt and sufficiency, of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 GENERAL DESCRIPTION OF SERVICES

1.1 Definition of Services. Professional’s “**Services**” consist of those services and obligations to be performed by Professional and Professional’s employees and consultants under this Agreement, including the Basic Services (hereinafter defined), and any Additional Services (hereinafter defined).

1.2 Familiarity and Experience. Professional represents that it is thoroughly familiar with and understands the requirements of the Project scope and is experienced in the design and administration of construction of building projects of the type and scope in accordance with the Owner’s program and requirements developed for the Project.

1.3 Professional Team.

1.3.1 Professional has employed and hereby designates _____ to serve as Professional’s representative (“**Professional’s Representative**”). Professional’s Representative is authorized and responsible to act on behalf of Professional with respect to directing, coordinating and administering all aspects of the Services. By execution of this Agreement, Professional acknowledges that Professional’s Representative has full authority to bind and obligate Professional on all matters arising out of or relating to this Agreement. Professional shall cause Professional’s Representative to devote whatever time is required to satisfactorily manage the Services. Further, Professional shall not remove Professional’s

Representative identified above from the Project without Owner's prior written approval, and if so removed Professional's Representative must be immediately replaced with a person acceptable to Owner.

1.3.2 No consultant may perform Services without the prior written approval of Owner. Professional shall be responsible for retaining any Professional's consultants and shall be solely responsible for paying any and all costs or expenses related thereto. Professional's consultants shall be considered as agents of Professional, and Professional shall be responsible for all actions, omissions, breaches, negligence and misconduct of Professional's consultants, as if Professional had performed the services of Professional's consultants directly. All of Professional's agreements with 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, Owner shall, upon Owner's request, obtain assignment of those of Professional's agreement(s) elected by Owner. Each of Professional's agreements with Professional's consultants shall specifically provide that Owner shall only be responsible to the consultant for those obligations of Professional that accrue subsequent to Owner's exercise of its right to take an assignment of such agreement. As a condition precedent to Owner's obligation to pay Professional's invoices, Professional shall provide to Owner copies of all of Professional's agreements with Professional's consultants.

1.3.3 Professional certifies that no employee or consultant will be assigned to perform any Services 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, Professional shall indemnify and hold harmless Indemnitees (hereinafter defined) from and against any and all Adverse Consequences (hereinafter defined) incurred as a result of any harm done to any student, employee, guest, vendor or property of Owner by any of Professional's employees or consultants assigned to perform Services.

1.4 Preparation / Sufficiency of Site. Professional shall (a) visit and properly inspect, consistent with the Standard of Care, the Project Site and any structure(s) or other man-made features to be modified; (b) familiarize itself with any surveys provided by Owner and with the location of all existing buildings, utilities, conditions, streets, equipment, components and other attributes having or likely to have an impact on the Project; (c) familiarize itself with Owner's layout and design requirements, conceptual design objectives, and budget for the Project; (d) familiarize itself with pertinent Project dates and programming needs, including the Project design schedule, (e) review and analyze all Project geotechnical, Hazardous Substances (hereinafter defined), structural, chemical, electrical, mechanical and construction materials tests, investigations, reports and recommendations; and (f) gather any other information necessary for a thorough understanding of the Project. If the Project involves modifications to any existing structure(s) or other man-made feature(s) at the Project Site, Professional shall also review all as-built and record drawings, plans and specifications of which Professional has been informed by Owner about and properly inspect, as is consistent with the Standard of Care, such existing structure(s) and man-made feature(s) to identify existing deficiencies and ascertain the specific locations of pertinent components, including structural components. Owner does not warrant or guarantee the accuracy or completeness of any information supplied. Professional uses any information provided at its own risk and is required to verify information contained therein. Professional hereby waives any and all claims, including claims for additional time or compensation based on the use of any information provided by Owner.

1.5 Coordination with Construction Manager. If Owner has selected a Construction Manager for the Project, the Professional shall perform its Services in conjunction, and coordination, with the services to be performed by Construction Manager. For the purposes of this Agreement, "**Construction Manager**" means such construction manager or construction managers with whom Owner may contract to provide construction management services and to complete all or a portion of the Work and the term "**Construction Management Agreement**" means the agreement(s) between Owner and Construction Manager. For the purposes of this Agreement, "**Contract**

Documents” mean the Construction Management Agreement, the exhibits thereto and the other documents which are or shall be referred to in the Construction Management Agreement as the “Contract Documents”, including the Construction Documents. The term “**Work**” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by Construction Manager to fulfill Construction Manager’s obligations.

1.6 Cooperation. Professional shall endeavor to develop, implement and maintain, in consultation with Owner and Contractor, a spirit of cooperation, collegiality, and open communication among the members of the Project team so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and the Project is successfully prosecuted and completed.

1.7 Errors and Omissions. Professional certifies that its design, documents and Services shall conform to Applicable Laws, notwithstanding that a portion of the design, documents and services may have been performed by one or more of Professional’s consultants. This duty is non-delegable, and Professional, by signing drawings or preparing drawings to submit for purposes of building permits shall be deemed to certify that it has taken necessary measures to ascertain the Applicable Laws. Professional shall promptly correct any Services, documents or Work Product (hereinafter defined) prepared or furnished by Professional or its consultants that contains errors, conflicts or omissions (“**Errors and Omissions**”) at no additional cost to Owner.

1.8 Professional Standards. Professional shall furnish the Services in accordance with professional standards currently practiced by similarly licensed professional firms on projects similar in size, complexity and cost to the Project (the “**Standard of Care**”).

1.9 Commissioning. Professional shall participate in and cooperate with, design phase, construction phase, and post-occupancy commissioning (including peer review), validation, and other third-party quality assurance and quality control processes, if any.

ARTICLE 2 SCOPE OF PROFESSIONAL’S BASIC SERVICES

2.1 General.

2.1.1 Professional’s “**Basic Services**” consist of all of the services to be provided by, and all obligations of, Professional under this Agreement, including those described in this **Article 2**.

2.1.2 Professional shall perform all Services in accordance with Applicable Laws (hereinafter defined) and: (a) Owner’s policies and project management guides listed under “Forms and Standards” at www.fp.ucf.edu; (b) “UCF Design, Construction, and Renovation Standards”; (c) “UCF Professional Services Guide”; (d) “UCF CS&T Standards” (items (a)-(d) as appearing on Owner’s website at www.fp.ucf.edu); (e) “UCF Green Building Construction and Renovation Requirements” (items (a)-(e) as appearing on Owner’s website at www.fp.ucf.edu); (f) “UCF Building Energy Systems Commissioning Procedure” (as appearing on Owner’s website at www.energy.ucf.edu); and (g) all other standards of Owner in effect at the time of the performance of the Services (the standards described in the foregoing clauses (a) through (g) being, collectively, “**Owner Standards**”). To the extent Owner’s standards are stricter than applicable legal requirements; such Owner’s standards shall be met unless Professional obtains Owner’s written consent to a deviation, which consent may be granted or withheld in Owner’s sole and absolute discretion. For the purposes of this Agreement, “**Applicable Laws**” means all federal, state, local, municipal, judicial and quasi-governmental laws, statutes, ordinances, orders, decrees, judgments, codes and regulations, governing or applicable to the Project, the Services or Professional, as the same may be amended, interpreted or enforced from time to time. The term “Applicable Law” also includes all rules and requirements of any utility company serving the Project Site.

2.1.3 The architectural, structural, mechanical, electrical, plumbing, and fire protection design and construction Drawings shall be developed using Building Information Modeling (“**BIM**”) software – latest Owner approved version. Additional design and construction Drawings such as civil, landscape and interiors shall be developed using AutoCAD or Building Information Modeling (BIM) software – latest Owner approved version. Any deviation from the use of the above software must be approved in writing by Owner’s Director of Facilities Planning and Construction. The BIM models shall be used by Professional for design coordination, collision avoidance, and production of traditional two-dimensional drawings, and may be used for energy analysis, day lighting analysis, and other building or systems analysis. The implementation and use of BIM shall be discussed by Professional and Owner at a BIM kickoff meeting as early in design as possible, with the agreed-upon parameters captured by Professional in a document to be entitled "BIM Execution Plan." The BIM Execution Plan (“**BEP**”) shall be updated and augmented by Professional, with written agreement by Owner throughout design and by Owner and Construction Manager throughout construction as needed to solidify details regarding terminology, schedule, content, format, risk allocation, and use of the model(s). Professional shall provide the BIM model(s) to Construction Manager prior to and during construction – subject to the limitations outlined in the BEP – for scheduling, coordination, resource management, estimating, and other uses deemed beneficial to Owner for delivery of the Project. Professional shall update the BIM model(s) at the end of construction to reflect the actual, "as-built" conditions. Final record document model(s) shall be delivered to Owner in the BIM format(s) as originally developed and as a fully integrated Revit-based model containing the architectural, structural, and mechanical, electrical and plumbing content.

2.1.4 During the design phases, Professional shall provide on-site program and budget verification, development and review workshops necessary or desirable to develop a design, acceptable to Owner and its user groups, which is within Owner’s budget. Such workshop(s) will be conducted with representatives of Owner’s user groups with jurisdiction over the Project, and shall utilize the “Charrette” format. Without limitation of the foregoing, at the Concept Schematic Design, Advanced Schematic Design and Design Development Phases (as each such Phase is further described below), Professional shall support and attend presentations and shall include drawings, models, renderings, animations, and other tools as necessary to illustrate and convey information on particulars of the design intent. This shall include site plans with building footprint, landscape and tree removal plans, building elevations, “fly-through” digitized renderings, and architectural details as needed. At such presentations, Professional shall also address all issues and concerns previously identified but not yet addressed by Professional to Owner’s University Review Committee’s satisfaction.

2.1.5 In accordance with Owner’s policies and the UCF Design and Professional Services Guide, Professional shall develop a Basis of Design document (“**BOD**”). The BOD shall include a complete Project schedule including all design milestones. The BOD shall be developed initially during the Concept Schematic Design, updated during each subsequent design phase and finalized on or before the Construction Document Phase. The BOD shall include detail appropriate to each respective phase of the design, and demonstrate the methods that will be used to achieve the goals set forth in Owner’s Project Requirements (“**OPR**”).

2.1.6 In addition to any other presentation or meeting requirements placed upon Professional elsewhere in this Agreement, 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:

2.1.6.1 Professional shall manage Professional’s Services, consult with Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to Owner.

2.1.6.2 If Owner has selected a Construction Manager for the Project, Professional shall coordinate Professional’s duties and responsibilities set forth in the

Construction Management Agreement with Professional's Services set forth in this Agreement and, further, shall coordinate its Services with those services provided by Owner and Owner's consultants and contractors.

2.1.6.3 Prior to the commencement of design activities, Owner and 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 Professional such items to be provided by Owner as may be available at that time.

2.1.6.4 Professional shall make presentations to Owner at any point in the Project development if issues should arise which make additional presentations, other than those listed elsewhere in this Agreement, necessary in Owner's best interest.

2.1.6.5 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.

2.1.6.6 Professional shall participate in regular Project conferences with Owner's staff. These meetings shall be scheduled by Owner at a location in Orange County, Florida, to be designated by Owner.

2.1.6.7 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.

2.1.6.8 Professional shall assist Owner in connection with Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

2.1.6.9 Professional shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, Professional shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

2.1.6.10 Professional shall keep accurate minutes of all meetings and distribute copies to all attending. All meetings shall be coordinated with Owner's staff. Meeting minutes shall be distributed within four (4) days of the meeting date.

2.1.6.11 Professional shall provide data, calculations, and other information as needed to assist Owner with its application for energy rebates.

2.1.7 If at any time during the performance of the Services, Professional believes it has discovered Hazardous Substances not anticipated by the Contract Documents, Professional shall immediately notify Owner of the discovery of said condition in writing. For the purposes of this Agreement, "**Hazardous Substances**" means all hazardous or toxic substances, materials, wastes, pollutants and contaminants which are listed, defined, or regulated under Applicable Laws pertaining or related to health, safety or the environment, including the Comprehensive Environmental Response Compensation and Liability Act as amended, (42 U.S.C. § 9601 et seq), the Resource Conservation and Recovery Act as amended, (42 U.S.C. §6901 et seq), the Federal Water Pollution Control Act (33 U.S.C.A. §§ 1251 to 1387), the Clean Air Act (42 U.S.C.A. §§ 7401 to 7671q), the Emergency Planning and Community Right

to Know Act (42 U.S.C.A. §§ 11001 to 11050), the Toxic Substances Control Act (15 U.S.C.A. §§ 2601 to 2692), the Solid Waste Disposal Act (42 U.S.C.A. §§ 6901 to 6992k), the Oil Pollution Act (33 U.S.C.A. §§ 2701 to 2761) and all rules and regulations promulgated pursuant thereto. Without limiting the generality of the foregoing, "Hazardous Substances" shall include polychlorinated biphenyl, asbestos (friable and non-friable), radon, urea formaldehyde, gasoline, diesel, oil, hydrocarbons, petroleum derived constituents, biomedical waste, or hazardous or toxic residue.

2.1.8 Professional's Design Services shall include those services described in **Paragraphs 2.2 to 2.6** below and shall include all structural, mechanical, electrical and plumbing engineering and fire and life safety design services and other design services typically provided by a similarly licensed professional and its consultants in connection with a development similar to the Project. Professional shall provide as Basic Services all professional services necessary to completely design the Project and prepare Construction Documents that fully indicate the requirements for construction of the Work, whether or not those services are individually listed or referred to in this Agreement; the only exceptions to this being: (a) the cost of those services that are provided by third-parties and that are expressly designated herein as being "Owner's responsibility" or "Owner-provided"; and (b) the cost of those engineering or consulting services that become necessary as a result of an Owner-directed change in Project scope affecting Professional and that are the subject of a written Additional Services Authorization (hereinafter defined). Professional shall make verbal and graphic presentations of the design to Owner at the completion of each phase of design Services and at other times and to such persons as Owner shall request. Professional shall submit design documents to Owner at intervals appropriate to the design process for purposes of evaluation and approval by Owner. With respect to the Phases of Services described in **Paragraphs 2.2 through 2.6** below, Professional shall not proceed from the then current phase to the next phase without Owner's prior written consent.

2.1.9 Professional and Professional's consultants shall endeavor to design the Project so as to achieve compliance within Owner's budget for Construction Cost (hereinafter defined). Professional shall issue necessary drawings, specifications and other documents and information that describe the scope of the Project for either Professional, Construction Manager, if applicable, or Owner's other cost consultant's use in preparing estimates of the Construction Cost. Throughout the design phase (and at any time before Owner's approval of the Construction Documents), Owner may require Professional, as part of the Basic Services, to revise all or any portion of the design documents (e.g. Advanced Schematic Design Documents, Design Development Documents, and Construction Documents) to the extent that such revision is necessary to enable the Project to be constructed in accordance with Owner's budget, Project schedule or other requirements established by Owner.

2.1.10 Value engineering is the detailed, systematic review of the design concepts, construction techniques, materials and building types associated with a project in terms of life cycle costs in an attempt to obtain increased value for every dollar spent. Professional shall perform value engineering review services throughout each phase of the Project, including analyzing the comparative costs and benefits of (a) alternative materials, (b) structural, mechanical, enclosure and other significant building systems, and (c) site engineering, as well as, overarching issues of program, budget and aesthetics, during each phase of the design of the Project, and shall report the alternatives and options to Owner in writing to determine which, if any, are to be incorporated into the Project. Professional shall incorporate those value engineering recommendations accepted by Owner into the Construction Documents.

2.1.11 Professional shall work with Owner to pursue Owner's goal, if any, of a Leadership in Energy and Environmental Design (LEED) certification for the Project at the GOLD level.

2.1.1 Professional shall comply with all UCF Green Building Construction and Renovation Requirements. The documents listed in said Requirements are required at every deliverable prior to submission and approval of professional services invoices.

2.1.2 Communications with Owner shall be through Owner's representative designated by Owner in accordance with **Paragraph 4.3** or such other person as may be designated by such Owner representative in writing. Communications by and with Professional's consultants shall be through Professional.

2.1.3 All of Professional's and Professional's consultants Work Product, including the Construction Documents, shall conform to Owner's Standards. Should any such deliverable deviate in any way from Owner's Standards, Professional shall be responsible for conspicuously identifying such deviation in writing to Owner at the time of delivery of the subject deliverable. No deviation from Owner's Standards shall be deemed to be approved by Owner unless expressly accepted in writing by Owner.

2.2 Pre-Design Phase (PD).

2.2.1 Professional shall meet with Owner to ascertain the requirements of the Project. The approved Facilities Program and OPR shall serve as the basic planning documents for the development of the Construction Documents (hereinafter defined).

2.2.2 Professional shall provide a preliminary evaluation of Owner's Facilities Program and OPR, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in **Paragraph 5.2**.

2.2.3 After reviewing the Facilities Program and OPR, Professional shall advise Owner of the tests and surveys described in **Article 4** that should be conducted prior to development of the Construction Documents.

2.2.4 Professional shall review with Owner alternative approaches to design and construction of the Project.

2.2.5 In addition to all other deliverables required of Professional under this **Paragraph 2.2**, Professional shall submit to Owner three (3) full-sized sets and one digital copy on CD of a revised Facilities Program that incorporate all changes to Owner's Facilities Program, if any, made during the Pre-Design Phase.

2.3 Conceptual Schematic Design (CSD) Phase.

2.3.1 Based on the approved Facilities Program, OPR, schedule and construction budget requirements, Professional shall prepare several alternative design solutions. Professional shall present these alternatives to Owner, making submittals of studies, consisting of sketches and initial concepts. After receiving Owner's comments, Professional shall prepare, for approval by Owner, "**Conceptual Schematic Design Documents**" that establish scaled relationships among the Project components and shall include plans, sections, elevations, study models, perspective sketches, schematic diagrams and narratives or major enclosure, electrical, mechanical and structural systems and survey of applicable codes and standards, phase studies, orientation, and relationships to existing and future programmed projects, which shall represent one or more recommended solutions.

2.3.2 Professional shall submit the Conceptual Schematic Design Documents to Owner for Owner's review, together with an Estimate of Probable Project Construction Cost. If Owner has selected a Construction Manager for the Project, Professional shall submit the Conceptual Schematic Design Documents to Owner for Owner's review and to Construction Manager for

review and use in preparing its estimate of Construction Cost (“**Construction Cost Estimate**”). Further, if an independent cost estimator is employed (by Professional or Owner), Professional shall also provide the Conceptual Schematic Design Documents to the independent cost estimator. Professional shall, if requested by Owner, study, consider, initiate and/or implement cost savings proposals as provided in **Subparagraphs 2.1.9** and **2.1.10** above. Professional shall also prepare and deliver to Owner the other Conceptual Schematic Design Phase deliverables listed in the then current version of the UCF Professional Design and Professional Services Guide. Professional shall also submit a draft version of the Basis of Design (BOD) document in accordance with Section 2.1.5. The Conceptual Schematic Design Phase shall not be deemed complete until the Construction Cost Estimate is verified by Owner to be within budget.

2.3.3 In addition to all other deliverables required of Professional under this **Paragraph 2.3**, Professional shall submit to Owner eight (8) full-sized sets of the Conceptual Schematic Design Documents.

2.4 Advanced Schematic Design (ASD) Phase.

2.4.1 Based upon the approved Conceptual Schematic Design Documents, and any adjustments authorized by Owner in the Facilities Program, schedule or budget, Professional shall prepare, for approval by Owner, “**Advanced Schematic Design Documents**” consisting of plans, drawings, 3-dimensional renderings and other information and materials illustrating the scale and relationship of Project components, energy conservation approach and building systems parameters. Professional shall submit the Advanced Schematic Design Documents to Owner for review, together with a further Estimate of Probable Project Construction Cost. If Owner has selected a Construction Manager for the Project, Professional shall also submit the Advanced Schematic Design Documents to Construction Manager for review and use in preparing an updated Construction Cost Estimate. Further, if an independent cost estimator is employed (by Professional or Owner), Professional shall also provide the Advanced Schematic Design Documents to the independent cost estimator. Professional shall, if requested by Owner, study, consider, initiate and/or implement cost savings proposals as provided in **Subparagraphs 2.1.9** and **2.1.10** above. Professional shall also prepare and deliver to Owner the other Advanced Schematic Design Phase deliverables listed in the current version of the then current UCF Professional Design and Professional Services Guide. Professional shall also submit a draft version of the Basis of Design (BOD) document in accordance with Section 2.1.5. The Advanced Schematic Design Phase shall not be deemed complete until the Construction Cost Estimate is verified by Owner to be within budget.

2.4.2 In addition to all other deliverables required of Professional under this **Paragraph 2.4**, Professional shall submit to Owner: (a) eight (8) full-sized sets of the Advanced Schematic Design Documents, (b) two (2) site plans with footprint and tree-removal plan (if applicable), and (c) an ASHRAE Energy Model with input and output data.

2.5 Design Development Phase.

2.5.1 Based on the approved Advanced Schematic Design Documents and any adjustments authorized by Owner in the Facilities Program, schedule or budget, Professional shall prepare, for approval by Owner, “**Design Development Documents**” consisting of plans, drawings, 3-dimensional renderings and other information and materials that illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts to fix and describe the size and character of the Project as to architectural, structural, mechanical, plumbing, fire protection and electrical systems, materials and such other elements as may be appropriate. The Design Development Documents shall include draft specifications that identify major materials and systems and establish in general their quality levels. Professional shall submit the Design Development

Documents to Owner for review, together with a further Estimate of Probable Project Construction Cost. If Owner has selected a Construction Manager for the Project, Professional shall also submit the Design Development Documents to Construction Manager for review and use in preparing an updated Construction Cost Estimate. If an independent cost estimator is employed (by Professional or Owner), Professional shall also provide the Design Development Documents to the independent cost estimator. Professional shall, if requested by Owner, study, consider, initiate and/or implement cost savings proposals as provided in **Subparagraphs 2.1.9** and **2.1.10** above. Professional shall also prepare and deliver to Owner the other Design Development Phase deliverables listed in the then current version of the UCF Professional Design and Professional Services Guide. Professional shall also submit a draft version of the Basis of Design (BOD) document in accordance with Section 2.1.5. The Design Development Phase shall not be deemed complete until the Construction Cost Estimate is verified by Owner to be within budget.

2.5.2 In addition to all other deliverables required of Professional under this **Paragraph 2.5**, Professional shall submit to Owner: (a) three (3) full-sized sets of the Design Development Documents, (b) two (2) copies of the site plan, (c) one (1) set of landscape plans, and (d) one (1) exterior lighting plan.

2.5.3 If a life-cycle cost computer analysis is authorized by Owner, three (3) copies of the necessary documentation will be submitted with the Design Development Documents, attached hereto. Professional shall prepare data, make the input and run a life-cycle cost computer program analysis approved by Owner. Before preparing the data, Professional shall discuss the energy-saving schemes proposed for the Project with Owner's project manager. When an agreement has been reached, Professional shall document the approved energy-saving schemes and obtain the written concurrence of Owner's project manager. Professional shall make the input and run the computer program using the following economic factors:

- (a) Discount rate = 7%;
- (b) Operating & Maintenance cost escalation = 0%;
- (c) Energy Replacement costs escalation = 1%;
- (d) Project Life = 25 years.

2.6 Construction Documents Phase.

2.6.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the budget authorized by Owner, Professional shall prepare and submit to Owner "**Construction Documents**" consisting of Drawings (hereinafter defined) and Specifications (hereinafter defined) setting forth in detail the requirements for the construction of the Project, together with a further Estimate of Probable Project Construction Cost. If Owner has selected a Construction Manager for the Project, Professional shall also submit the Construction Documents to Construction Manager. In the event Owner elects to fast-track the design of certain portions of the Project, Professional shall only submit 100% Construction Documents for such fast-tracked portions, if any, and 50% complete and 100% Construction Documents for the remainder of the Project. Any fees associated with fast-tracking the Project are included in Professional's Basic Services Fee (hereinafter defined). Upon receipt of Owner's approval of 50% Construction Documents, Professional shall prepare and submit 100% Construction Documents to Owner for review. At the 50% and 100% Construction Documents stages, Professional shall submit Seven (7) sets of Construction Documents and one (1) ASHRAE Energy Model (including an electronic copy of all input and output data) to Owner. Professional shall also prepare and deliver to Owner the other Construction Documents Phase deliverables listed in the then current version of the UCF Professional Design and Professional Services Guide. Professional shall also submit a draft version of the Basis of Design (BOD) document in accordance with Section 2.1.5. For the purposes of this Agreement, "**Drawings**" means the graphic and pictorial portions of the Construction Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams and "**Specifications**"

means that portion of the Construction Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

2.6.2 With Professional's submittal of 50% Construction Documents and Estimate of Probable Project Construction Cost, Professional shall also provide to Owner for Owner's approval, a list of all tests, inspections and reports that are required in the Contract Documents, if any, including those to be provided by Professional as part of the Services. Such list shall designate the party responsible for the engagement of and payment to providers of those services. To the extent that testing or inspection services are necessary as a result of errors, omissions or inconsistencies in the Contract Documents provided by Professional or Professional's consultants or in the performance of the Services, Professional shall be responsible for the costs thereof. For a threshold building, as defined in Chapter 553, Florida Statutes, a structural inspection plan shall be included in the Specifications.

2.6.3 If Owner has selected a Construction Manager, upon Owner's approval of 100% Construction Documents and Construction Manager's Construction Cost Estimate, Construction Manager's will prepare a Guaranteed Maximum Price proposal based on such Construction Documents. Professional shall resolve with Owner any apparent discrepancy between Construction Manager's final estimate of Construction Cost and the scope of work and requirements of Owner. Results of these meetings/resolutions must be documented by Professional in writing. Professional shall assist Owner in its negotiations with Construction Manager in an effort to develop an acceptable Guaranteed Maximum Price proposal. If Owner does not accept Contractor's Guaranteed Maximum Price proposal because it exceeds Owner's budget for the Project, Professional shall, at Owner's request, revise the Construction Documents in a manner acceptable to Owner and Contractor, to bring the Guaranteed Maximum Price to an amount within Owner's budget or greater amount, if approved by Owner, all in accordance with the process described in **Subparagraphs 2.1.9** and **2.1.10** above.

2.6.4 Construction Manager will furnish to Owner and Professional a complete list of the assumptions utilized by Construction Manager in the development of the initial Guaranteed Maximum Price proposal and the finally agreed Guaranteed Maximum Price with respect to (a) changes in the initial set of Construction Documents on which the proposed or agreed Guaranteed Maximum Price is based, and/or (b) Project components not fully described in such Construction Documents. Professional shall review and analyze such assumptions, and shall submit a written analysis of them to Owner, pointing out any that, in Professional's opinion, are inaccurate, inconsistent with the design intent of the Project or not in accordance with the generally accepted standards of professional practice. Upon resolution by Owner, Contractor and Professional of the issues identified in such written analysis, Professional shall complete, modify, or re-design the Construction Documents as needed at no cost to Owner.

2.6.5 After the Guaranteed Maximum Price has been accepted by Owner, Professional shall incorporate into the Construction Documents any revisions which are necessary due to inaccurate assumptions made in the development of the Guaranteed Maximum Price.

2.7 Bidding or Negotiation Phase.

2.7.1 Professional shall attend Owner's pre-bid meetings with potential bidders and respond to questions from potential bidders and shall be responsible for developing and providing to Owner any addenda to the Construction Documents that result from those meetings.

2.7.2 Professional shall submit to Owner four (4) conformed sets of Construction Documents incorporating all design review comments, pre-bid inquiries, and other modifications made after the 100% complete Construction Documents have been submitted to Owner.

2.7.3 Professional shall assist in reviewing, evaluating and advising Owner regarding contractor and/or subcontractor bids and final Project schedule. If Owner has selected a Construction Manager for the Project, Professional shall also assist in reviewing, evaluating and advising Owner regarding the Guaranteed Maximum Price proposal.

2.8 Construction Administration

2.8.1 Professional's responsibility to provide Construction Administration Services commences with Owner's execution of the Contractor's Agreement and such responsibility shall continue until Final Completion of the Project.

2.8.2 Professional shall carry out its Construction Administration Services as set forth in: (a) this **Paragraph 2.8**, and (b) the UCF Design and Professional Services Guide. To the extent the terms of this Agreement and the UCF Design and Professional Services Guide are inconsistent with the terms of this Agreement, the terms of this Agreement shall govern.

2.8.3 Duties, responsibilities and limitations of authority of Professional shall not be restricted, modified or extended without written agreement of Owner and Professional.

2.8.4 Professional shall be a representative of, and shall advise and consult with, Owner during construction. Professional shall have authority to act on behalf of Owner only to the extent provided in this Agreement.

2.8.5 Professional shall attend weekly scheduled construction meetings at the Project Site and shall provide such representation as may be required to fulfill the intent and interpretation of the Construction Documents for the Project. Professional's consultants shall attend weekly scheduled construction meetings at the Project Site during the periods of time when Work that is subject of their design documents is being coordinated and installed. In addition, Professional and Professional's consultants shall meet on site or at a location designated by the Owner as required to resolve any conflicts arising from errors, omissions, and deficiencies in the Project at no additional cost to the Owner. On the basis of on-site observations as an architect or as an engineer, as applicable, Professional and Professional's consultants shall keep Owner informed of the progress and quality of the Work and shall guard Owner against defects and deficiencies in the Work.

2.8.6 Professional shall not have control over, or charge of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work.

2.8.7 Professional shall at all times have access to the Work wherever it is in preparation or progress.

2.8.8 Professional shall keep Owner apprised of all contacts and/or communications between Professional and Contractor. Professional shall copy Owner on all correspondence between Professional and Contractor.

2.8.9 Where Owner has selected a Construction Manager for the project, prior to Construction Manager's first application for payment, Professional and Professional's consultants shall review Construction Manager's schedule of values and advise Owner in writing of any recommended adjustments.

2.8.10 Where Owner has selected a Construction Manager for the Project, and based on Professional's observations and evaluations of Construction Manager's applications for payment, Professional shall review and certify the amounts due Construction Manager. Professional's certification for payment shall constitute a representation to Owner, based on

Professional's observations at the Project Site and on the data comprising Construction Manager's application for payment, that the Work has progressed to the point indicated and that, to the best of Professional's knowledge, information and belief, the quality of the Work is in accordance with the Construction Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Construction Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Construction Documents correctable prior to completion and to specific qualifications expressed by Professional. The issuance of a certificate or recommendation for payment shall further constitute a representation that Construction Manager is entitled to payment in the amount certified or recommended.

2.8.11 Professional shall promptly notify Owner in writing of any Work Professional observes which does not conform to the Construction Documents. Whenever Professional considers it necessary or advisable for implementation of the intent of the Construction Documents, Professional will have authority to require additional inspection or testing of the Work, whether or not such Work is fabricated, installed or completed. However, neither this authority of Professional, nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of Professional to Contractor, its subcontractors, material and equipment suppliers, any of their agents or employees or other persons performing portions of the Work.

2.8.12 Where Owner has selected a Construction Manager for the Project, Professional shall review Construction Manager's submittal and procurement schedule, which shall be required to include shop drawings, product data, samples, warranties, and other submittals required by Contract Documents, in tabular form which shall be required to indicate Specification section number and section name (CSI Format).

2.8.13 Professional shall review, certify, approve, reject or take other appropriate action upon Construction Manager's requests for information and submittals, such as shop drawings, product data and samples. Professional shall not approve any submittals unless such submittals conform to: (a) the Facilities Program, OPR, and BOD; (b) the Construction Documents; (c) Owner's total budgeted Construction Cost; (d) the UCF Design and Construction Standards; and (e) Applicable Laws and other requirements authorities having jurisdiction. In the event the UCF Design and Construction Standards exceed applicable legal requirements, the stricter or greater UCF Design and Construction Standards shall govern. Professional's review shall be completed, and response shall be delivered simultaneously to Construction Manager and to Owner, within the time specified for such review and response in the Project schedule or in a submittal schedule approved by Owner and, if no such time is specified, with such promptness so that all Work can be performed without delay and all products or materials may be ordered or fabricated with sufficient time to meet the Project schedule. Professional shall maintain a master file of all requests for information and submittals, including submittal register, made to Professional, with duplicates for Owner.

2.8.14 Professional shall promptly review: (a) claims for extra compensation or extensions of time from Contractor, and (b) proposed (i) substitutions, (ii) value engineering suggestions and (iii) change orders, and make written recommendations to Owner concerning such claims and proposals. Additionally, Professional shall provide Owner all applicable documentation pursuant to above noted claims and proposals at no additional cost to Owner.

2.8.15 Professional shall conduct inspections to determine the date or dates of Substantial Completion and Final Completion, shall receive and forward to Owner for Owner's review and records, written warranties and related documents required by the Contractor's Agreement and assembled by Contractor, and, when applicable, issue a final certificate or recommendation for payment upon compliance by Construction Manager with the requirements of the Construction Management Agreement.

2.8.16 Where Owner has selected a Construction Manager for the Project, Professional shall interpret and render initial decisions on matters concerning performance of Owner and Construction Manager under the requirements of the Construction Management Agreement on written request of either Owner or Construction Manager. Professional's response to such request shall be made within fifteen (15) days of receipt of such a request. Interpretations and decisions of Professional shall be consistent with the intent of, and reasonably inferable from, the Construction Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, Professional shall endeavor to secure faithful performance by both Owner and Construction Manager and shall not show partiality to either.

2.8.17 Professional's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the construction documents, and if concurred with by Owner.

2.8.18 Professional shall prepare record drawings at Project completion, including original "red lined" set and corrected AutoCAD files on recorded CD or DVD. These drawings shall include changes made to the Construction Documents, including changes made by change orders, construction change directives, and addenda to the Construction Documents.

2.8.19 Professional shall perform all of its required services relating to Substantial Completion and Final Completion in accordance with Owner's then current policies, procedures and standards.

2.9 Post Occupancy Phase.

2.9.1 Professional shall perform all of its required services relating to final completion of construction deliverables in accordance with the UCF Design and Professional Services Guide.

2.9.2 Professional shall respond to Owner's requests to review design and construction issues during the construction warranty period; coordinate and participate in the end of the warranty period inspection in accordance with the UCF Design and Professional Services Guide; and produce a summary report documenting deficiencies, problems, or other outstanding items.

ARTICLE 3 ADDITIONAL SERVICES

For the purposes of this Agreement, "**Additional Services**" means material additional or changed services of Professional: (a) not expressed under this Agreement as being part of the Basic Services, and (b) not reasonably inferable from the nature of the Basic Services required of Professional as being part of the Basic Services. For any Additional Services approved in writing by the Owner, compensation shall be based on the labor rates set forth in **Section 9.1.2.**

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 Owner's Project Requirements. Professional acknowledges that Owner has provided or will provide Professional with information regarding OPR for the Project, which will include the goals and minimum requirements for the Project which the Project design and construction teams must achieve.

4.2 Project Budget. Owner shall establish and update an overall budget for each Project, including the Construction Cost, Owner's other costs and reasonable contingencies related to all of these costs.

4.3 Owner's Representative. Owner shall designate a representative authorized to act on Owner's behalf with respect to the Project. Owner may change such representative from time to

time by written notice to Professional. Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by Professional in order to avoid unreasonable delay in the orderly and sequential progress of Professional's services.

4.4 Timelines / Schedule. Owner shall review and approve or take other appropriate action on all submittals of Professional within the timeframes set forth in the Professional's Proposal, or if no time is specified for a particular submittal, then within a reasonable time.

4.5 Property Survey. If required, Owner shall furnish, or direct Professional to obtain at Owner's expense, surveys describing physical characteristics, legal limitations and utility locations for the Project Site, and a written legal description of the Project Site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the Project Site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths.

4.6 Geotechnical Information. If required, Owner shall furnish, or direct Professional to obtain at Owner's expense, the services of geotechnical engineers as necessary for the Project. Such services may include test borings, test pits, sub-surface imaging, determinations of soil bearing values, percolation tests, evaluations of Hazardous Substances, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate Professional recommendations.

4.7 Tests. Owner shall pay for structural, mechanical, chemical, air and water pollution tests; tests for Hazardous Substances; and, other laboratory and environmental tests, inspections and reports required by Applicable Laws or the Contract Documents.

4.8 Document Reviews. Review of Professional's services, submittals and documents by Owner shall be solely for the purpose of determining whether such services, submittals and documents are generally consistent with Owner's intent and such review shall not relieve Professional of any of its responsibilities. Notwithstanding the foregoing, prompt written notice shall be given by Owner to Professional if Owner becomes aware of any fault or defect in Professional's services, submittals or documents.

ARTICLE 5 CONSTRUCTION COST

5.1 Definition. "Construction Cost" shall be the total cost or estimated cost to Owner of all elements of the Project designed or specified by Professional. Construction Cost shall include the cost at current market rates of labor and materials furnished by Owner and Contractor and equipment designed, specified, selected or specially provided for, by Professional, including connections to utilities, plus a reasonable allowance for Contractor's overhead and profit. Construction Cost does not include the compensation of Professional, Owner's consultants, the costs of the land, rights-of-way, fixtures, moveable furnishings and equipment and contingencies or other costs which are the responsibility of Owner as provided in **Article 4**.

5.2 Responsibility for Construction Cost. Evaluations of Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost, if any, prepared by Professional, represent Professional's best judgment as a design professional familiar with the construction industry. It is also recognized, however, that neither Professional nor Owner has control over the cost of labor, materials or equipment, over Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions.

ARTICLE 6 USE OF PROFESSIONAL'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

6.1 Transmittal. Professional warrants that in transmitting Work Product, or any other information, Professional is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If Owner and Professional intend to transmit Work Product or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. For purposes of this Agreement, "**Work Product**" means all work product produced, prepared, and/or developed by or for Professional in connection with the Services Professional renders to Owner pursuant to or in connection with this Agreement, including all plans, drawings (including the Drawings), designs, specifications (including the Specifications), systems, reports, data, materials, models, prototypes, methodologies, studies, processes, improvements, sketches, concepts, know-how, formulae, inventions, discoveries, models, CAD drawings, BIM models, and other electronic expression, documents, diagrams, graphs, charts, notes, writings, discoveries, customizations, modifications, fixes, research, photographs and other expression.

6.2 Assignment. Professional hereby expressly assigns to Owner, without reservation except that which is expressly allowed in this Article, all of Professional's right, title and interest in and to all Work Product, including all patent, copyright, trademark, trade secret, design and other proprietary rights that may now or in the future exist therein or appurtenant thereto, whether in oral, written graphic, electronic, machine readable, human readable or any other form and in whatsoever medium now known or hereinafter developed, and all copies of the foregoing and all information, data and knowledge incorporating, based upon or derived from the foregoing. ALL WORK PRODUCT SHALL BE AND AT ALL TIMES SHALL REMAIN THE SOLE AND EXCLUSIVE PROPERTY OF OWNER. All Work Product shall be, where applicable, considered "works made for hire" as provided by Applicable Laws. Owner, in return, hereby grants Professional a revocable, nonexclusive license to reproduce the Work Product for purposes relating directly to Professional's performance of the Services and for Professional's archival records. This nonexclusive license shall terminate automatically upon the occurrence of either a breach of this Agreement by Professional or upon termination of this Agreement. This nonexclusive license is granted to Professional alone and shall not be assigned by the Professional to any other person or entity, except that the nonexclusive license granted in this Agreement to Professional for purposes of Professional's performance under this Agreement may be sub-licensed to the Professional's consultants (with the same limitations). Subject to the foregoing, this nonexclusive license shall terminate automatically upon an attempted assignment of this license in violation of this Section. Professional will mark all Work Product with Owner's copyright or other proprietary notice and will take all actions deemed necessary by Owner to protect Owner's rights therein. In the event that any Work Product is ever deemed not to constitute works made for hire, or in the event that Professional is ever deemed, by operation of law or otherwise, to retain any rights in or to any Work Product, Professional shall promptly assign all of Professional's right, title and interest in and to such Work Product to Owner. Professional shall execute any documents of assignment or registration of proprietary or other rights requested by Owner and will perform any and all further acts deemed necessary or desirable by Owner in order to confirm, exploit or enforce the rights herein granted and assigned by Professional to Owner, and should Professional fail to do so upon Owner's request, Professional hereby expressly authorizes Owner and its agents and/or representatives to execute all such documents in Professional's name and on Professional's behalf, and make appropriate disposition of them, including filing and/or recording such documents in appropriate governmental or administrative offices anywhere throughout the world. Owner's obligation to pay Professional is expressly conditioned upon Professional's obtaining a valid written assignment of all right, title and interest from Professional's consultants as to their respective Work Product in terms identical to those that obligate Professional to Owner as expressed in this Section, which right, title and interest Professional hereby assigns to Owner.

6.3 Delivery of Work Product. Professional shall deliver all Work Product to Owner promptly upon its completion or the sooner termination of Professional's Services hereunder,

provided that any undisputed compensation due Professional for Services rendered in connection with such specific Work Product has been paid to Professional.

6.4 Owner's Marks. Professional shall not use Owner's or any of Owner's affiliates' trade names, trademarks, logos, or other designations for any reason without Owner's express prior written consent.

6.5 Digital Documents. In addition to hard copies, Professional shall deliver to Owner with each submittal to Owner or at such other times as Owner may request, in a medium approved by Owner in accordance with **Subparagraph 2.1.3** above, a digital copy of: (a) the most recent design drawings and specifications (including the Drawings and Specifications), and (b) final as-constructed/as-built record Drawings and Specifications and Construction Contract Documents, including those which are produced or created by Professional's consultants or others.

6.6 Other Rights. Professional shall secure in writing from all patentees, copyright holders and assignees of all Project-related expression, all copyrights, assignments and licenses related to such expression (e.g., designs, drawings, Construction Documents, specifications, documents in computer form, models, etc.) as necessary to allow Owner the full, unlimited and unencumbered reuse of that expression. Professional shall immediately convey all such copyrights, assignments and licenses to Owner without reservation except that which is expressly allowed in this Article. In the case of products, materials, systems, and other items, protected by patent, Professional and Professional's consultants shall not specify or cause to be specified any infringing use of a patent.

6.7 Notice of Infringement. Should Professional become aware of or receive notice of potential or actual infringement of any intellectual property right related to the Project, regardless of the source of that awareness or notice, Professional shall immediately cease the copying and any other activity which is the source of the potential or actual infringement; and within seven (7) days (a) investigate the potential or actual infringement, (b) submit to Owner copies of all documents relating to that potential or actual infringement, (c) submit to Owner copies of all documents relating to that awareness, the notice, or the object thereof, and (d) issue to Owner a complete written response and analysis of the potential or actual infringement and the course of action recommended by Professional. Professional shall submit to Owner a supplement of the initial report within seven (7) days of Professional's receipt of, or awareness of, additional related information. Nothing in this Agreement shall be deemed to relieve Professional of its obligations under this Article, nor shall Owner's receipt of the information indicted in this Article give rise to any duty or obligation on the part of Owner.

6.8 Indemnification. Professional shall indemnify, defend and hold harmless Indemnitees from all Adverse Consequences suffered or incurred by Indemnitees which are related or connected to infringement of intellectual property rights, whether or not the infringement is potential, accused or proven. If, in any such suit or claim, the Services, the Project or any part, combination or process thereof, is held to constitute an infringement and its use is preliminarily or permanently enjoined, Professional shall promptly use its best efforts to secure for Owner a license, at no cost to Owner, authorizing continued use of the infringing work. If Professional is unable to secure such a license within a reasonable time, Professional shall, at its own expense and without impairing performance requirements, either replace the affected work, in whole or part, with non-infringing components or parts or modify the same so that they become non-infringing. Should Owner become aware of, or receive notice of, potential, accused or actual infringement of intellectual property rights, Owner shall, in its sole option, have the right to engage independent legal counsel to advise Owner as to the infringement. Owner shall deliver notice to the Professional prior to engaging counsel or incurring expense that is to be included within Professional's indemnification obligations under this Section. The costs and fees for such counsel shall be borne by Professional and shall be immediately recoverable by Owner against amounts due or otherwise to be due to Professional, Professional's fees being reduced by that amount, or, in the event that no further amounts are due or to be due Professional, such costs and fees shall be payable by Professional to Owner upon Owner's written demand.

6.9 Survival. The provisions of this **Article 5** shall survive the expiration or termination of this Agreement.

ARTICLE 7 CLAIMS AND DISPUTES

7.1 Mediation. Except for claims in which injunctive relief is sought, as a condition precedent to either Party filing any action for a claim, dispute or other matter arising out of or related to this Agreement, the Parties shall submit the dispute to mediation pursuant to the American Arbitration Association Construction Industry Mediation Rules currently in effect. Either Party may file a written request for mediation with the American Arbitration Association and serve a copy on the other Party. The mediation shall be concluded within sixty (60) days of the request, unless otherwise agreed or ordered by the court. Any legal or equitable proceedings shall be stayed pending conclusion of the mediation. The Parties shall share the mediator's fee and other administrative costs of the mediation equally. The mediation shall be held in Orange County, Florida, unless the Parties agree upon another location. Agreements reached in mediation shall be enforceable in any court of competent jurisdiction as settlement agreements. To the extent permitted by law, the mediation proceedings shall be confidential and shall be privileged from disclosure in any subsequent proceedings as settlement discussions.

7.2 Dispute Resolution. For disputes not resolved by mediation in accordance with the preceding Paragraph, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction and, in that regard, each of the Parties hereby (a) irrevocably and unconditionally consents to submit itself to the sole and exclusive personal jurisdiction of any federal or state court located within Orange County, Florida, (the "**Applicable Courts**"), (b) waives any objection to the laying of venue of any such litigation in any of the Applicable Courts, (c) agrees not to plead or claim in any such court that such litigation brought therein has been brought in an inconvenient forum and agrees not otherwise to attempt to deny or defeat such personal jurisdiction or venue by motion or other request for leave from any such court, and (d) agrees that such Party will not bring any action, suit, or proceeding in connection with any dispute, claim, or controversy arising out of or relating to this Agreement or the Project in any court or other tribunal other than any of the Applicable Courts.

7.3 Waiver of Jury Trial. To the extent allowed by applicable law, Owner and Professional expressly covenant and agree to waive the right to trial by jury in connection with any litigation or judicial proceeding related to or concerning, directly or indirectly, this Agreement, or the conduct, omission, action, obligation, duty, right benefit, privilege or liability of a Party. This waiver of right to trial by jury is separately given and is knowingly, intentionally and voluntarily made by the Parties, and both acknowledge that separate and good and valuable consideration has been provided by each for this waiver. The Parties have had an opportunity to seek legal counsel concerning this waiver. This waiver is intended to and does encompass each instance and each issue as to which the right to a jury trial would otherwise accrue. The Parties further certify and represent to each other that no employee, representative or agent of Professional or Owner (including their respective counsel) has represented, expressly or otherwise, to Professional or Owner or to any agent or representative of Professional or Owner (including their respective counsel) that they will not seek to enforce this waiver of right to jury trial. This waiver shall apply to this Agreement and any future amendments, supplements or modifications hereto.

7.4 Joinder. In the event the dispute resolution procedure applicable to another dispute between Owner and another party regarding the Project is different from the procedure specified in this Agreement, then Professional hereby consents, if requested by Owner, to its joinder in such dispute resolution proceeding, provided that the dispute resolution proceeding involves substantially common questions of law or fact. Professional shall include a substantially similar provision in its agreements with Professional's consultants.

7.5 Chapter 558, Florida Statutes. In any claims between Owner and Professional or Professional's consultants, the Parties expressly opt out of the provisions of Chapter 558, Florida

Statutes. Professional shall include a substantially similar provision in its agreements with Professional's consultants.

7.6 Continuing Performance. Professional shall continue performing services and Owner shall continue paying undisputed amounts due Professional during the pendency of disputes; provided, however, nothing in this Paragraph shall be deemed to limit a Party's rights hereunder to terminate this Agreement.

ARTICLE 8 TERM, TERMINATION OR SUSPENSION

8.1 Term. Unless sooner terminated as provided herein, this Agreement shall remain in effect until _____. This Agreement may be renewed at Owner's option for three (3) additional one year periods.

8.2 Termination by Owner for Default. If Professional defaults by failing to perform, in accordance with the terms of this Agreement, as reasonably determined by Owner, Owner may give written notice to Professional (a) terminating this Agreement effective seven (7) days from the date of notice; or (b) setting forth the nature of the default and requesting Professional initiate cure within seven (7) days from the date of notice. At any time thereafter, if Professional fails to initiate cure upon the request of Owner and diligently prosecute such cure until complete, Owner may give notice to Professional of immediate termination. If Owner terminates this Agreement pursuant to this Paragraph, and it is subsequently determined by a court of competent jurisdiction that Professional was not in default, then in such event said termination shall be deemed a termination for convenience as set forth in **Paragraph 7.3**.

8.3 Termination by Professional for Default. In the event of a material breach of this Agreement by Owner, Professional shall give Owner twenty-one (21) days prior written notice of Professional's intention to terminate or suspend provision of Services. Such notice shall specify in detail the grounds for the intended termination or suspension. If the material breach is not cured within such twenty-one (21) day period, Professional may terminate or suspend performance under this Agreement by subsequent written notice to Owner. Notwithstanding anything herein to the contrary, Professional will not terminate or suspend services as a result of Owner's non-payment if the non-payment is based on Owner's good faith dispute concerning the amount of or entitlement to a payment, provided that all of the following conditions are met: (a) Owner delivers written notice to Professional within the time frame provided in this Agreement for making the payment, specifically identifying the items or amounts Owner disputes, (b) Owner pays within the time frame required by this Agreement any undisputed amounts, and (c) Owner participates in good faith in communications directed at resolving the dispute.

8.4 Termination or Suspension by Owner for Convenience. Owner may at any time give written notice to Professional terminating this Agreement or suspending the Project, in whole or in part, for Owner's convenience and without cause. If Owner terminates this Agreement or suspends the Project, Professional shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of termination or suspension.

8.5 Termination Compensation. If the Agreement is terminated by Owner pursuant to **Paragraph 7.1**, no further payment shall be made to Professional until completion of the Project. At such time, Professional's compensation shall, at Owner's option, be calculated: (a) on the basis of Services actually performed and expenses actually incurred prior to the effective termination date, or (b) on the basis of the payment terms set forth elsewhere herein. In either case, Professional's compensation shall be reduced by all costs and damages incurred by Owner as a result of the default of Professional. If the Agreement is (i) terminated by Professional pursuant to **Paragraph 7.2**; (ii) terminated by Owner pursuant to **Paragraph 7.3**; or (iii) suspended more than ninety (90) days by Owner pursuant to **Paragraph 7.3**, Professional's compensation shall be calculated on the basis of Services actually performed and expenses actually incurred prior to the effective termination or suspension date.

8.6 Refund of Prepaid Fees. Notwithstanding anything herein to the contrary, in the event of termination of this Agreement, if Owner has made any deposits or paid in advance for any Services that have not been performed by Professional as of the date of termination, Professional shall promptly reimburse to Owner all amounts paid in advance with respect to such Services.

8.7 Waiver of Consequential Damages. Notwithstanding anything in this Agreement to the contrary, in no event shall Professional be entitled to receive termination expenses, unabsorbed overhead or lost profit or any other consequential, special, punitive or incidental damages, all of which are hereby expressly waived by Professional.

8.8 Cooperation on Termination. In the event of termination for any reason, Professional shall cooperate with Owner, all members of the Owner's Project team and any replacement architect or engineer so as to promote as smooth and seamless a transition as is feasible under the circumstances. Further, in the event of suspension or termination, Professional, upon request of Owner and payment of all undisputed fees and expenses due pursuant to this Agreement, shall deliver to Owner hard copies and digital copies (in accordance with the requirements of **Paragraph 5.5** of this Agreement) of all Work Product, whether completed or in progress on the date of suspension or termination.

ARTICLE 9 SCHEDULE OF SERVICES

9.1 Project Schedule. Professional's Basic Services shall be performed in compliance with the Project schedule, as may be amended by agreement of Owner and Professional, in writing, subject to delays not the fault of Professional or its consultants.

9.2 Schedule of Services. Within ten (10) days after the Effective Date, Professional shall prepare and deliver to Owner for Owner's review and approval a detailed schedule for the performance of the Services ("**Schedule of Services**"). The Schedule of Services shall be coordinated with the Project schedule and include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (a) for Owner's review (b) for the performance of Owner's consultants, and (c) for approval of submissions by authorities having jurisdiction over the Project. Professional and Professional's consultants are bound by the Schedule of Services and will not deviate from such Schedule without prior written authorization by Owner. Whether or not changes in the Schedule of Services have been authorized by Owner, Professional shall update the Schedule of Services as necessary to reflect Owner-approved changes or unavoidable deviations and to indicate the probable impact of these deviations on the performance of Professional's Services and the Project. Time is of the essence as to Professional's performance of its obligations under this Agreement. Professional understands and acknowledges that time is of the essence in completion of the Project and Owner may incur damages if the Project is not completed on time. Professional shall at all times carry out its duties and responsibilities as expeditiously as possible, consistent with the Standard of Care and in accordance with the Schedule of Services most recently approved by Owner in writing, subject to extensions for delays not the fault of Professional or its consultants for which timely notice is delivered to Owner in accordance with **Paragraph 8.4** below.

9.3 Impact of Schedule Changes on Standard of Care. If changes in the Schedule of Services are requested by Owner during the course of the Project that would require Professional to perform with a lesser standard of care than the Standard of Care required by this Agreement in order to meet the changed schedule, Professional shall notify Owner in advance in writing that such deviation will be required and to provide Owner the specific basis for that opinion. Professional shall not deviate to a lesser standard of care in the absence of an express written authorization from Owner. No such authorization by Owner, however, shall be construed to authorize performance by Professional at a standard of care that is less than the standard of care that is required by Applicable Laws.

9.4 Delays. Should Professional be obstructed or delayed in the prosecution or completion of its Services as a result of unforeseeable causes beyond the control of Professional, and not due to any fault or neglect attributable to Professional, including acts of God or of public enemy, acts of government or of Owner, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then Professional shall notify Owner in writing within three (3) days after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Professional may have had to request a time extension. If Professional delivers timely notice of a delay and Owner concurs that an extension of time for the performance of the Services or a portion thereof is appropriate, Owner may authorize an extension of time for the performance of the Services (or portion thereof). No interruption, interference, inefficiency, suspension or delay in the commencement or progress of Professional’s Services from any cause whatsoever, including those for which Owner may be responsible in whole or in part, shall relieve Professional of its duty to perform or give rise to any right to damages or additional compensation from Owner. Professional expressly acknowledges and agrees that it shall receive no damages for delay. 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. Notwithstanding the foregoing, if through no fault and neglect attributable to Professional, the Services to be provided hereunder have been delayed for a total of six (6) months during the design phases or three (3) months during the Construction Phase, Professional’s compensation shall be equitably adjusted, with respect to those Services that have not yet been performed, to reflect the incremental increase in costs experienced by Professional, if any, as a result of such delays.

9.5 Days. For purposes of this Agreement, “days” means consecutive calendar days unless a contrary intent is specifically indicated with regard to any reference to the word “days”.

ARTICLE 10 COMPENSATION

10.1 Owner agrees to pay Professional as compensation for Professional's Services:

10.1.1 For the Basic Services described in **Article 2**, a lump sum amount to be negotiated on a per project basis (the “**Basic Services Fee**”). The Basic Services Fee shall be based on the hourly rates set forth below and shall constitute Professional’s complete compensation for providing the Basic Services. The labor rates include hourly rates plus actual fringe benefit rate for each labor classification, and shall be used in pricing all projects under this Agreement. Unless otherwise specifically permitted **Subparagraph 9.1.5** below, there shall be no additional charges, such as overhead, including office supplies, use of equipment, secretarial support, overtime or holiday pay, insurance or the like, and Owner shall not be obligated to reimburse Professional for any such expenses.

10.1.2 Basic Services Hourly Rates:

<u>Professional</u>	<u>Rate per hour</u>
Principal	\$
Draftsperson	\$
CAD Technician	\$
Clerical/Administrative	\$

	\$
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10.2 Invoices. Professional shall submit an invoice upon completion of the milestones described in each proposal presented to Owner and completion of any authorized Additional Services. Invoices during Construction Administration, if applicable, shall be submitted every 90 days throughout the Construction Phase. Invoices shall be on Owner’s form, shall include appropriate back-up documentation, and shall be prepared in accordance with the requirements set forth in the UCF Design and Professional Services Guide. In addition to all other required information and documentation, Professional shall submit with each invoice: (a) a current, itemized statement of amounts invoiced, amounts received, and all other funds sought from Owner and received by Professional, (b) waivers and releases of lien for payments received in form and substance acceptable to acceptable to Owner, and (c) such other information as Owner shall reasonably require to enable Owner to verify and evaluate the Services completed in accordance with the terms and conditions of this Agreement.

10.3 Payments. Undisputed payments owed shall be paid by Owner within thirty (30) days of receipt of a complete invoice accompanied by required supporting information and documentation. Where Owner specifies payment to cover a certain invoice or portion of an invoice, Professional shall apply the payment to the account as specified and shall so indicate that application on subsequent monthly statements. The acceptance by Professional of final payment shall constitute and operate as a release of Owner from all further obligations or liabilities of Owner. At Owner’s option, Owner may make payment, on Professional’s account, directly to any of Professional’s consultants, including by joint check payable to Professional and Professional’s consultant, in which case, the amount paid directly or by joint check to Professional’s consultant shall be deducted from any payment due. No direct or joint check payment by Owner shall create any liability or obligation on the part of Owner to make any further or ongoing payments to any Professional’s consultant.

10.4 Withholding of Payment. In addition to any other remedy of Owner under this Agreement, at law, or in equity, Owner may withhold payment from Professional on account of Services that Owner contends in good faith contain errors, omissions or are otherwise incomplete, inconsistent or do not conform to the requirements of this Agreement, or are contrary to written instructions of Owner, without prejudice to the Professional’s right to assert a claim for such disputed sums. Additionally, Owner shall have the right to offset against amounts otherwise due Professional for damages incurred, or for damages that Owner reasonably expects to incur, as a result of Services that Owner contends in good faith contain errors, omissions or are otherwise incomplete, inconsistent or do not conform to the requirements of this Agreement, or are contrary to written instructions of Owner, without prejudice to the Professional’s right to assert a claim for such disputed sums. Owner shall provide Professional with a written explanation of any such withholding or offset.

ARTICLE 11 BACKGROUND CHECKS, DRUG TESTING, E-VERIFY, CIVIL LITIGATION

11.1 Background Check.

11.1.1 Professional shall perform, at Professional’s expense, a criminal background screening for each employee, consultant, agent or representative (collectively “**Personnel**”) intended to perform work or services at a site owned or controlled by Owner, which criminal background screening will have been performed no more than ninety (90) days prior to the assignment of Professional’s employees to Owner’s site for work. Professional acknowledges that this obligation may require re-screening of previously screened Professional’s employees. Background screening shall require that Personnel shall not have been convicted of, found guilty of, regardless of adjudication, or have entered a plea of nolo contendere or guilty to any offense prohibited under Section 435.04(2), Fla. Stat. Professional shall not permit any person

to provide services or work under this Agreement who does not meet the criminal background screening requirements set forth herein.

11.1.2 Professional shall conduct:

- a) a Level 1 background check through FDLE;
- b) a search of the on-line State of Florida Sex Offender/Predator lists; and
- c) a search of the National Sex Offender website.

11.1.3 Professional's employees shall be rescreened annually; provided, however, in the event a Professional's employee previously screened ceases to provide work or services to Professional for more than ninety (90) days, Professional shall re-screen such Professional's employee prior to allowing such Professional's employee to again provide services or work at Owner's site.

11.1.4 Professional shall maintain copies of the results of the criminal background checks for the term of this Agreement.

11.1.5 In the event Professional obtains, or is provided, supplemental criminal background information, including police reports or arrest information, after execution of this Agreement, which potentially disqualifies a Professional's employee previously deemed eligible to provide work or services under this Agreement, Professional shall promptly notify owner of such matter. Professional shall take immediate action to review the matter; provided, however, during such review time until a determination of eligibility is made, Professional shall immediately cease allowing said Professional's employee to provide services or work under the Agreement. Additionally, Professional's employees shall be required to notify Professional within forty-eight (48) hours of any arrest which has occurred after a Professional's employee was deemed eligible to provide services or work under this Agreement.

11.1.6 Professional shall submit to owner an affidavit, attached as **Exhibit A**, affirming the employees listed in the affidavit have completed the required background check and have been deemed eligible by Professional to provide services under this Agreement. Should there be a change in the employees listed on the affidavit, Professional shall immediately submit an updated affidavit specifically identifying new or removed Professional employees.

11.1.7 Owner may terminate this Agreement immediately upon notice to Professional for any violation of this **Article 10**.

11.2 **E-verify.** Owner is an E-verify employer. Professional must be enrolled in E-Verify with the federal Department of Homeland Security at the time of performance of services under this Agreement. Professional must provide proof of enrollment as a professional in E-verify at the time of Owner's award of this Agreement to Professional. If not, then Owner may terminate this Agreement immediately upon notice to Professional for any violation of this provision. After enrollment in E-Verify, Professional shall use E-Verify to initiate verification of employment eligibility of all new hires, including consultants, agents, or representatives of Professional who are assigned to the Project or intended to perform work or services under this Agreement. Professional shall complete the E-Verify of Professional's new hires within three (3) business days after the date of hire.

11.3 **Drug Testing.** Owner's facilities, including the Project Site, are drug-free workplaces and school environments. Professional warrants that it has, or will have prior to performing work or services under this Agreement, a drug-testing program in place that complies with Applicable Laws.

11.4 Civil Litigation. Professional warrants that it is not plaintiff or defendant in any civil litigation currently pending in the United States and concerning the type of work/services to be performed under this Agreement that would materially impair its ability to perform its obligations under this Agreement. If Professional becomes either a plaintiff or defendant in such civil litigation during the term of this Agreement, Professional will inform Owner as soon as practicable. If Professional fails to inform Owner of such civil litigation, Owner may terminate this Agreement and Professional will be responsible for all costs and damages incurred by Owner as a result of said termination.

ARTICLE 12 AUDIT RIGHTS

12.1 Audits. Owner or its designee may, upon reasonable notice, audit the records of the Professional and its consultants during regular business hours, during the term of this Agreement and for a period of three (3) years after final payment is made by Owner to Professional under this Agreement or longer, if required by Applicable Laws. Such audits may be performed by an Owner's representative or an outside representative engaged by Owner. Professional shall retain all records for the Project during performance of the Project and for at least three (3) years after Final Completion.

12.2 Records.

12.2.1 For purposes hereof, Professional's "records" means any and all information, materials and data of every kind and character, whether hard copy or in electronic form, which may, in Owner's judgment have any bearing on or pertain to this Agreement, including books, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, written policies and procedures, time sheets, payroll registers, payroll records, cancelled payroll checks, subcontract files (e.g., including proposals of successful and unsuccessful bidders, bid recap), original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), back-charge logs and supporting documentation, invoices and related payment documentation, general ledgers, records detailing cash and trade discounts earned, insurance rebates and dividends, superintendent reports, drawings, receipts, vouchers and memoranda.

12.2.2 In addition to other record keeping requirements, 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 Services. 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, Florida Statutes, or as otherwise provided by law. 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. Professional shall meet all requirements for retaining public records and transfer, at no cost, to Owner all public records in possession of 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. This Agreement may be terminated by Owner for refusal by Professional to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by Professional in conjunction with this Agreement.

12.3 Access. Owner's authorized representative shall have reasonable access to Professional's and its consultants' facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to this Agreement, and shall be provided adequate and appropriate work space at Professional's and its consultants' facilities, may count employees at the Project Site, may be present for the distribution of payroll and shall have such other rights of access as may be reasonably necessary to carry out an audit.

12.4 Adjustments. If an audit discloses overpricing or overcharge, then Professional shall refund the overpayment. If an audit discloses overpricing or overcharges of one percent (1%) of the total amount paid hereunder or Two Hundred Thousand Dollars (\$200,000), whichever is less, in addition to making adjustments for the overcharges, the reasonable actual cost of Owner's audit shall be reimbursed to Owner by Professional. Any adjustments and/or payments that must be made as a result of any such audit or inspection of Professional's invoices and/or records shall be made within ninety (90) days from presentation of Owner's findings to Professional.

ARTICLE 13 INSURANCE AND INDEMNIFICATION

13.1 Required Insurance. Professional shall maintain all forms of insurance required by Applicable Laws. Professional shall also maintain the following insurance for the duration of this Agreement or such longer period of time as may be specified below or required by Applicable Laws:

13.1.1 Commercial General Liability insurance coverage for commercial general liability (including loss or damage because of bodily injury, personal injury, sickness, disease or death of persons and injury to or destruction of property, as a result of the acts or omissions of Professional, its employees, agents or consultants), which shall provide a per occurrence coverage amount not less than One Million Dollars (\$1,000,000) and One Million Dollars (\$1,000,000) in the aggregate;

13.1.2 Automobile Liability insurance covering owned and rented vehicles operated by Professional with policy limits of not less than One Million Dollars (\$1,000,000) combined single limit and aggregate for bodily injury and property damage;

13.1.3 Workers' Compensation insurance at statutory limits;

13.1.4 Employer's Liability insurance with a policy limit of not less than Five Hundred Thousand Dollars (\$500,000);

13.1.5 Professional Liability insurance to compensate Owner for all negligent acts, errors and omissions by Professional and the Professional Team arising out of this Agreement, with limits of not less than Two Million Dollars (\$2,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate. Professional's Professional Liability insurance policy shall: (a) be maintained for a period up to and including the date of the expiration of the applicable "statute of repose", (b) have a retroactive date prior to the performance of any Services to be provided under this Agreement, and (c) state that in the event of cancellation or non-renewal, the discovery period for insurance claims (tail coverage) shall be at least four (4) years; and

13.1.6 Professional shall purchase valuable papers and records coverage for plans, specifications, drawings, reports, maps, books, blueprints, and other printed documents in an amount sufficient to cover the cost of recreating or reconstructing valuable papers or records utilized during the term of this Agreement.

13.2 Insurance Requirements Generally. All of the foregoing policies of insurance shall be: (a) issued by an insurance carrier approved in advance by Owner, with a rating from A.M. Best Company of not less than A/XII, and licensed to provide such coverage in the State of Florida, and (b) in a form satisfactory to Owner without unacceptable exclusions or exceptions to coverage. All policies and renewals thereof are to be written for not less than one (1) year. All policy numbers must be clearly identified. All liability policies must provide for claims to be made on an occurrence basis, except Professional Liability, which shall be written on a claims made basis. The insurance policies will name, and the certificates and endorsements will show, Indemnitees as additional insureds on the all liability policies (other than the Professional Liability policy) and all certificates of insurance, except that for the Professional Liability policy, shall include the following statement: "Indemnitees are added as additional insureds to the Commercial General Liability and Automobile

Liability policies. Additional Insured status applies on a primary/non-contributory basis. Commercial General Liability, Automobile Liability, and Worker's Compensation Waiver of Subrogation applies in favor of Indemnitees." All insurance policies required of Professional shall be primary and non-contributory to any other insurance or indemnity as may be available to any additional insured. Owner shall be named as "Certificate Holder" on the Certificate of Insurance for Professional's Professional Liability insurance policy. The deductibles or self-insured retentions on Professional's insurance policies shall not exceed Fifty Thousand Dollars (\$50,000) per occurrence, or the amount per claim set forth above in **Subparagraph 12.1.5** in the case of Professional's Professional Liability insurance; provided, however, payment of any such deductible or self-insured amounts shall be at Professional's sole cost and expense. It shall be the insurance company's responsibility to seek reimbursement from the insured. Professional for itself and on behalf of its insurance carriers, waives and releases any right of recovery or subrogation for any claim, damage, or loss covered or insured by any insurance policy required of Professional under this Agreement that Professional or its insurers may have at any time against Indemnitees and Professional shall cause its insurance policies to be so endorsed. The required insurance policies shall remain in effect for the benefit of Owner at least through any warranty period covering the Project but in no case for less than four (4) years after the date of issuance of the final Certificate for Payment by Professional or such longer period as may be specified elsewhere herein. The insurance policies required of Professional shall be endorsed to contain a provision requiring a written notice directly from the producer or insurer to Owner at least thirty (30) days prior to any cancellation, non-renewal or material modification of the policies, provided that only ten (10) days' prior written notice shall be required in the case of cancellation for non-payment of premium.

13.3 Consultants' Insurance. Professional shall ensure that any and all Professional's consultants engaged or employed by Professional also carry and maintain the above-specified policies of insurance meeting the requirements of **Sections 12.1** and **12.2** above and Professional shall include language in Professional's consultancy agreements binding Professional's consultants to the terms and conditions of this **Article 12**.

13.4 Evidence of Insurance. Upon execution of this Agreement, and at every date for renewal of a required insurance policy and at such other times as Owner shall request, Professional and Professional's consultants shall cause a certified copy of Professional's and Professional's consultants' insurance policies or, at Owner's election, Certificates of Insurance, Declarations Pages and Additional Insured Endorsements, to be issued to Owner by an insurance agent licensed in the State of Florida. The maintenance in full current force and effect of the insurance coverage required by this Agreement and provision of a valid evidence of insurance that meets the requirements of this Agreement are conditions precedent to the payment of any amounts due Professional by Owner. Professional shall deliver the required evidence of insurance to the following address:

University of Central Florida
EH&S Risk Management
P.O. 163500
Orlando FL 32816

13.5 Failure to Maintain Insurance. The failure of Professional or any of Professional's consultants to fully and strictly comply at all times with the insurance requirements set forth herein will be deemed a material breach of this Agreement. In the event that Professional shall fail or be unable to obtain or maintain coverage required pursuant to this Article, Owner, in addition to all other rights and remedies available to it and without waiving Professional's default, shall have the right (but not the obligation) to obtain and/or maintain coverage of the type and amount required hereunder on behalf of Professional; in which case, Professional shall furnish to Owner all necessary information and to reimburse Owner for the cost of such coverage. At Owner's option, Owner may deduct the costs and expenses of any coverage obtained by Owner on behalf of Professional from any amount due to Professional under this Agreement or under any other agreement between Owner and Professional.

13.6 Insurance No Limitation. Insurance coverage required in this Agreement shall be additional security for the obligations assumed by Professional and in no event shall the types or limits of coverage required be deemed to limit any obligations or liabilities assumed under this Agreement. The carrying of insurance shall not be deemed to release Professional or in any way diminish its liability or obligations hereunder, by way of indemnity or otherwise.

13.7 Effect of Insurance. Compliance with insurance requirements shall not relieve Professional of any responsibility to indemnify Owner for any liability to Owner as specified in any other provision of this Agreement, and Owner shall be entitled to pursue any remedy in law or equity if Professional fails to comply with the contractual provisions hereof. Indemnity obligations specified elsewhere herein shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.

13.8 Owner's Right to Adjust Requirements. Owner has the right to allow Professional deviate from any of the above insurance requirements, if Owner, at Owner's sole discretion decides to do so. If Owner decides to allow Professional to deviate from the above noted insurance requirements, Owner will inform Professional in writing in those particular circumstances. Unless Owner notifies Professional in writing that Owner is willing to allow Professional deviate from the insurance requirements noted above, all of the above insurance requirements shall apply to Professional.

13.9 Indemnification. To the maximum extent permitted by law, Professional shall indemnify and hold Owner, University of Central Florida Board of Trustees, and their respective officers, employees and trustees (collectively, "Indemnitees") harmless from and against any and all charges, complaints, actions, suits, proceedings, hearings, investigations, delays, claims, demands, judgments, awards, orders, decrees, stipulations, injunctions, damages, dues, penalties, fines, expenses, amounts paid in settlement, liabilities (whether known or unknown, whether absolute or contingent, whether liquidated or unliquidated, and whether due or to become due), obligations, taxes, liens, losses, fees and costs, including all attorneys' fees and all court and arbitration costs (at any level or of any type), (collectively, "Adverse Consequences") in connection with Professional's performance of this Agreement to the extent caused by the negligent acts or omissions, recklessness, or intentional wrongful misconduct of Professional or anyone for whose acts or omissions Professional may be liable. The provisions of this **Paragraph 12.9** shall be in addition to, and shall not be construed to negate, abridge, or reduce other rights or obligations of, any other indemnification right that may be available to Indemnitees under this Agreement or Applicable Laws. Professional's indemnification obligations under this Agreement, including those specified in this **Paragraph 12.9**, shall be deemed part of the Project specifications and to fully comply with Section 725.06 or 725.08, Florida Statutes, as applicable, 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 725.06 or 725.08, Florida Statutes, as applicable, 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 Professional's indemnification obligations comply fully with Section 725.06 and 725.08, Florida Statutes, as applicable, including any amendments, in all respects.

13.10 Claims Under Indemnity. In claims against Owner indemnified under this Article by an employee of Professional, anyone directly or indirectly employed by Professional or anyone for whose acts Professional may be liable, the indemnification obligation under this Article shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Professional under workers' compensation acts, disability benefit acts or other employee benefit acts, nor shall the indemnification obligation be limited by the existence of any insurance policy.

13.11 Survival. Professional's obligations under this **Article 12** shall survive the expiration or earlier termination of this Agreement and the completion of the Services.

ARTICLE 14 GOVERNMENT REGULATIONS

14.1 Clean Air Act / Federal Water Pollution Control Act. Professional certifies that it does, and shall, comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et.seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et.seq., as amended), and will include a provision in all consultancy agreements as required under Federal law.

14.2 Executive Order 11246. Professional certifies that it does, and shall, comply with Executive Order 11246, (Equal Employment Opportunity), as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60).

14.3 “Anti-kickback” Act. Professional certifies that it does, and shall, comply with the Copeland “Anti-kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR, Part 3). Professional shall report all suspected or reported violations to the Economic Development Administration.

14.4 Contact Work Hours and Safety Standards Act. Professional certifies that it does, and shall, comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5).

14.5 Civil Rights Act of 1964. Professional certifies that it does, and shall, comply with Title VI of the Civil Rights Act of 1964 (P.L.88-352).

14.6 Education Amendments of 1972. Professional certifies that it does, and shall, comply with Section 112 of P.L. 92-45 and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686).

14.7 Rehabilitation Act. Professional certifies that it does, and shall, comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

14.8 Age Discrimination Act. Professional certifies that it does, and shall, comply with the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107).

14.9 Drug Abuse Office and Treatment Act. Professional certifies that it does, and shall, comply with the Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended.

14.10 Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act. Professional certifies that it does, and shall, comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended.

14.11 Public Health Service Act. Professional certifies that it does, and shall, comply with Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd-3 and 290ee-3, as amended).

14.12 Civil Rights Act of 1968. Professional certifies that it does, and shall, comply with Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et.seq.), as amended.

ARTICLE 15 WARRANTY AGAINST WATER INTRUSION & MOLD

15.1 5 Year Warranty. For five (5) years after the date of Substantial Completion of the Work, Professional shall warranty, repair, and remediate any incident of water intrusion or water damage caused by Professional’s improper design of the Project’s exterior systems, without additional

expense to Owner. This includes the improper specification of faulty or unproven products, and the improper/inadequate detailing of building systems.

15.2 Notification. If Professional becomes aware of a design flaw, building practice, material unreliability or any other reason that the completed Project could be subject to water intrusion, mold, fungus, or bacterial growth, Professional will notify Owner in writing within twenty-four (24) hours. Additionally, Professional shall be responsible for correcting the Work or repairing the damage caused by Professional's improper design without additional expense to Owner for a period of five (5) years.

15.3 Remediation. If, for a period of five (5) years after the date of Final Completion of the Work, water intrusion occurs for any of the reasons listed in **Paragraph 14.1** or **Paragraph 14.2** above, and said water intrusion causes mold, fungus, or bacterial growth or damage, Professional will be responsible for the cost of removing the mold, fungus, or bacterial growth and repairing any damage caused by Professional's improper design. Correction, repair, or replacement of warranted or guaranteed Work described in this Section 14, or found elsewhere in this Contract, shall be done without any additional expense to Owner during the warranty period. If correction or repair of the same Work fails to result in a permanent fix or solution on more than two (2) occasions during the warranty period, the Owner may at its sole discretion, demand replacement of the Work without any additional expense to Owner. Should Professional assert that the required warranty work is due to a construction flaw, and not design flaw, Owner shall retain an independent third party to make a determination as to the nature of the flaw. Should the third party determine that the flaw is design and not workmanship, Professional shall be responsible for all costs incurred in obtaining such third party determination.

ARTICLE 16 WARRANTIES

16.1 Warranties to be Contained in Construction Documents.

16.1.1 Professional shall specify in the Construction Documents that there shall be a minimum two (2) year warranty on all building components. The minimum two (2) year warranty shall in no way limit, reduce or shorten any warranty guaranteed by law, issued by manufacturers, or accepted as a general contracting or construction practice.

16.1.2 Professional shall also specify in the Construction Documents that the roof and its components shall be warranted against water intrusion, leaks, and defects for a period of twenty-five (25) years.

16.2 Professional's Representations and Warranties. In addition to all other representations and warranties of Professional in this Agreement, Professional represents and warrants to, and covenants with, Owner as follows:

16.2.1 Qualifications. Professional is a sophisticated person or business entity that possesses a high level of experience and expertise in business administration, construction, contract administration and superintendent of projects of similar or like size, complexity and nature as the Project. Professional acknowledges that Owner is relying on Professional's representation that it possesses sufficient skill, knowledge, experience and ability to fully perform the Services and its obligations under this Agreement and that it will assign to the Project similarly qualified individual professionals, managing those professionals as needed to guarantee that quality of performance.

16.2.2 License. Professional: (a) is licensed to practice architecture and/or engineering as required by Applicable Law, (b) Professional's consultants are all duly licensed to practice their respective professions as required by Applicable Laws, to the extent licensure is required to

comply with Applicable Laws, and (c) Professional and Professional's consultants shall maintain such licensure in good standing throughout the performance of the Services.

16.2.3 Adequate Consideration. Professional's fees specified in this Agreement are adequate and sufficient consideration for Professional's provision of all professional services (including those of Professional's consultants and other consulting engineers and consultants) necessary for Professional's complete performance of all Services.

16.2.4 Solvency. Professional is financially solvent, able to pay its debts as they mature and possesses sufficient working capital to complete the Services and perform its obligations under this Agreement and under the Contract Documents.

16.2.5 Power and Authority. Professional has the right, power and authority to execute and deliver this Agreement and to consummate the transactions contemplated by it; neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by it nor the fulfillment of nor the compliance with the terms, conditions and provisions of this Agreement will conflict with or result in a violation or breach of any Applicable Laws, or any other instrument or agreement of any nature to which Professional is a party or by which it is bound or may be affected, or constitute (with or without the giving of notice or the passage of time) a default under such an instrument or agreement; no consent, approval, authorization or order of any person is required with respect to the consummation of the transactions contemplated by this Agreement.

16.2.6 No Contingency Fee. Professional warrants that Professional has not employed or retained any company or person, other than a bona fide employee working solely for Professional, to solicit or secure this Agreement and that Professional has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for 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, Owner shall have the right to terminate the Agreement without liability and, at its discretion, to deduct from the Professional's fee, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration. 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 of the Services or the earlier termination of this Agreement.

16.2.7 Convicted Vendor List. Professional represents and warrants that it is not on the convicted vendor list for a public entity crime committed within the past thirty-six (36) months. Professional further represents and warrants that it will neither utilize the services of, nor contract with, any supplier, or consultant for an amount in excess of Fifteen Thousand Dollars (\$15,000) in connection with this Project if such supplier or consultant has been placed on the convicted vendor list within the past thirty-six (36) months. Professional must notify Owner within thirty (30) days after a conviction of a public entity crime applicable to Professional or to an affiliate of Professional.

16.2.8 Conflict of Interest. Professional presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of the Services and Professional shall employ no persons having any such interest to perform any portion of the Services.

ARTICLE 17 ENERGY EFFICIENT COMMERCIAL BUILDING TAX DEDUCTION

17.1 Energy Efficiency.

17.1.1 Owner reserves the right to designate any eligible entity as the "Designer" of the energy efficient improvements incorporated in the Project for the purposes of allocating accelerated depreciation benefits pursuant to Section 179D of the Internal Revenue Code of 1986, as amended (the "**Code**");

17.1.2 if Owner determines that Professional shall receive accelerated depreciation benefits as a "Designer" for the purposes of Section 179D of the Code or that Professional shall otherwise benefit financially from the monetization of the accelerated depreciation benefit, Professional shall agree to discount its fee or provide a cash rebate to Owner (the determination of rebate versus discount to be determined by Owner in its sole discretion) in an amount equal to no less than fifty percent (50%) of the incremental financial benefit realized by Professional as a result of the accelerated depreciation benefit or the monetization thereof, such actual percentage to be negotiated in good faith by Owner at the time the financial benefit to Professional becomes ascertainable;

17.1.3 Owner reserves the right to retain a third-party consultant ("**Energy Efficiency Consultant**") to manage and administer the process of obtaining and monetizing the accelerated depreciation benefit derived from the Project and to designate the Energy Efficiency Consultant as the "Designer" of the energy efficient improvements for the purposes of Section 179D of the Code; and

17.1.4 Professional shall cooperate in all reasonable respects with the Energy Efficiency Consultant's efforts to obtain and monetize any such benefits derived from the Project on behalf of Owner.

ARTICLE 18 **MISCELLANEOUS**

18.1 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to its choice of law provisions.

18.2 **Integration.** This Agreement represents the entire and integrated agreement between Owner and Professional, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project. This Agreement may be amended only by written instruments signed by both Owner and Professional. To the extent Professional has performed services for the Project within the scope of the Agreement before execution of this Agreement, all rights and liabilities of the Parties for performance of the prior services are merged and included within and shall be governed by the terms and conditions of this Agreement.

18.3 **Severability.** If any provision of this Agreement, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions shall remain valid and enforceable.

18.4 **Waiver.** No provision of this Agreement may be waived except by written agreement of the Parties waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Agreement.

18.5 **Strict Compliance.** No failure of Owner to insist upon strict compliance by Professional with any provision of this Agreement shall operate to release, discharge, modify, change or affect any of Professional's obligations.

18.6 **Successors and Assigns.** Owner and Professional, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other Party to this Agreement and to the partners, successors and assigns of such other Party with respect to all covenants of this Agreement. Professional shall not assign (whether partially or wholly) this Agreement whether by

operation of law or otherwise, without the prior written consent of Owner, which Owner may grant or withhold in its sole and absolute discretion. Any attempted assignment in violation of the foregoing prohibition shall be void *ab initio* and, at Owner's election, a breach of this Agreement. If Professional makes a permitted assignment in accordance with this provision, Professional shall nevertheless remain legally responsible for all obligations arising under the Agreement, unless otherwise agreed by Owner.

18.7 Third-Party Beneficiaries. This Agreement shall inure solely to the benefit of the Parties and their successors and assigns, and, except as otherwise specifically provided in this Agreement, nothing contained in this Agreement is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third-party against either Owner or Professional.

18.8 Annual Appropriations. Owner's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

18.9 No Bribes or Kickbacks. Professional shall not by any means:

- (i) induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;
- (ii) offer to accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its consultants; or
- (iii) without the express written permission of Owner, call for or by exclusion require or recommend the use of any consultant, product, material equipment, system, process or procedure in which Professional has a direct or indirect proprietary or other pecuniary interest.

18.10 Independent Contractor. Professional is an independent contractor to Owner. Owner shall not in any manner be responsible or accountable for: (a) any violation by Professional or the Professional Team of any Applicable Laws, or (b) for any injury, loss or damage arising from or out of any act or omission of Professional or the Professional Team.

18.11 Exhibits. All exhibits referenced herein and attached hereto are incorporated herein by reference.

18.12 Small Businesses. Owner is an equal opportunity institution and as such, encourages the use of small businesses including women and minority-owned small businesses in the provision of construction related services. Small businesses should have a fair and equal opportunity to compete for dollars spent by Owner to procure construction-related services. Competition ensures that prices are competitive and a broad vendor base is available. Professional shall use good faith efforts to ensure opportunities are available to small businesses, including women and minority-owned businesses, on the Project.

18.13 Equal Opportunity / Nondiscrimination. In performing all Services, Professional shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. 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. 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.

18.14 Survival. All of Professional’s representations, warranties and indemnities made in, required by, or given in accordance with this Agreement, as well as all continuing obligations of the Parties indicated in this Agreement, will survive final payment, completion, and acceptance of Professional’s Services or termination or completion of this Agreement or termination of the Services of the Professional.

18.15 Remedies Cumulative. 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.

18.16 Construction. This Agreement has been negotiated by the Parties with the advice of counsel. Therefore, this Agreement shall not be interpreted more strictly against one Party than the other, including by virtue of one Party having drafted some or all of this Agreement. The singular shall include the plural, the plural the singular, and the use of any gender shall include all genders. Whenever the word “including”, “include” or “includes” is used in this Agreement it shall be deemed to be followed by the words “without limitation” Caption headings are included for ease of use only and shall not be utilized for purposes of interpreting the provisions of this Agreement. All Paragraph and Article references in this Agreement are to Articles and Paragraphs of this Agreement unless expressly stated otherwise.

18.17 Flow Through. Professional shall incorporate the terms of this Agreement in all agreements with its consultants for this Project.

18.18 Conflicts. In the event of a conflict between the terms and conditions of any of the numbered Articles or Paragraphs of this Agreement and the terms and conditions of any exhibit hereto, then the provision granting the greater rights or remedies to Owner, or imposing the greater duty, standard, responsibility or obligation on Professional, each as determined by Owner, in its sole discretion, shall govern.

18.19 Notices. Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, (b) reputable overnight delivery service with proof of delivery, or (c) legible facsimile or email transmission, sent to the intended addressee at the address set forth beneath the Parties’ signature blocks below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given upon receipt or refusal to accept delivery, or, in the case of facsimile or email transmission, as of the date of the facsimile or email transmission.

18.20 Sufficiency of Services. Nothing in this Agreement is intended or shall be construed to require Owner to determine the adequacy, accuracy or sufficiency of the design, Professional’s Work Product or Professional’s Services and nothing in this Agreement shall impose upon Owner a duty to third-parties to assure that Professional, Professional’s consultants, Construction Manager, subcontractors or others are adhering to Applicable Laws. Further, Owner’s review of, inspection of, acceptance of, or payment for any of Professional’s Services shall not constitute acceptance of, or a waiver of any of Owner’s rights or remedies relating to, Services that fail to conform to the requirements of this Agreement, unless Owner expressly accepts such non-conforming Services in writing.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, a duly authorized and validly authorized representative of each Party has affixed his or her respective signature hereto.

FOR THE PROFESSIONAL: FIRM

ATTEST:

(Name, Title, & Corporate Seal)

(Signature)

(Print Name)

(Title)

On this ____ day of _____, 2017

As Witnessed By:

(Signature)

(Print Name)

On this ____ day of _____, 2017

FOR OWNER: THE UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES



EXHIBIT A

AFFIDAVIT OF CRIMINAL BACKGROUND, E-VERIFY AND DRUG SCREENING

AGREEMENT: _____

PROFESSIONAL NAME: _____ DATE: _____

By signing this form, I am swearing or affirming that all individuals providing work or services to University of Central Florida (“**Owner**”) under the above-referenced Agreement, on any Owner owned or leased property: (i) have been background screened in accordance with requirements set forth in the Agreement; (ii) have been deemed eligible by Professional to provide work or services to Owner based on the results of such screening; (iii) have passed drug screening; and (iv) are legally eligible to work in Florida.

The information contained herein is current, as of the date this Affidavit is furnished to Owner. All individuals providing work of services to Owner under the above-referenced Agreement are listed below.

Each individual is identified by name, date of birth and shall fall into one (1) of the following categories:

- Previously screened and deemed eligible.
[Attach list of individuals]
- New individuals screened and deemed eligible.
[Attach list of individuals]
- Individuals no longer providing services for Professional under the Agreement
[Attach list of individuals]

Signature of Affiant

NOTARY PUBLIC, STATE OF FLORIDA
Sworn to and subscribed before me this __ day of _____, 2017.
My commission expires