

 **AIA** Document C103™ – 2015

**Standard Form of Agreement Between Owner and Consultant without a  
Predefined Scope of Consultant's Services**

AGREEMENT made as of the Twenty-fifth day of October  
in the year Two-thousand Twenty-two  
(In words, indicate day, month and year.)

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

School District of Hernando County Florida  
8016 Mobley Rd  
Brooksville, FL 34601

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

Affiliated Engineers SE, Inc.  
One Harbour Place, Suite 450  
Tampa, FL 33602

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

This document does not contain a description of the Consultant's scope of services. A description of the Consultant's services must be inserted in Article 2 or attached as an exhibit.

This document is intended to be used in conjunction with AIA Standard Form of Consultant's Services documents.

Consultant's discipline:

HVAC Commissioning

for the following Project:

(Name, location and detailed description. Time limits for bringing claims in Section 6.1.1 are tied to completion of the "Project." The "Project" may be limited to the scope of services to be provided by the Consultant, or the Consultant may be providing services for a "Project" involving design and construction of one or more structures. Care should be taken in describing or defining the Project.)

Phase 2 HVAC Replacement Central High School  
14075 Ken Austin Parkway  
Brooksville, FL 34613

The Project will consist of campus wide upgrades and replacement of the HVAC systems. The scope of this contract is for the commissioning of the design and construction by other parties under separate contract with the Owner.

The Owner and Consultant agree as follows.

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### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1:

*(State below Initial Information, such as details of the Project's site and program; identity of the Architect, Owner's contractors and other consultants, and Consultants' subconsultants; anticipated procurement method; and other information relevant to the Consultant's Services.)*

This project is based on **RFQ 0251-201-2203** and the information contained therein. The Design Professional is VoltAir Consulting Engineers, Inc. and the Construction Manager is The A.D. Morgan Corp.

§ 1.2 Unless otherwise specifically defined in this Agreement, terms in this Agreement shall have the same meaning as those in AIA Document A201™-2007, General Conditions of the Contract for Construction.

§ 1.3 The Owner's anticipated design and construction schedule:

- .1 Design phase milestones, if any:  
TBD- Consultant will work within the schedule of the design professional and construction manager to meet applicable design deadlines
- .2 Date for commencement of construction:  
On or before June 1, 2023
- .3 Substantial Completion date:  
TBD
- .4 Other milestone dates:  
TBD

§ 1.4 The Owner and Consultant may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Consultant shall appropriately adjust the schedule, the Consultant's services, and the Consultant's compensation.

## ARTICLE 2 CONSULTANT'S RESPONSIBILITIES

§ 2.1 The Consultant shall provide the following professional services:

*(Describe the scope of the Consultant's services or identify an exhibit or scope of services document setting forth the Consultant's services and incorporated into this document in Section 11.2.)*

Commissioning per RFQ #0251-201-2203 and the attached proposal (Exhibit C)

§ 2.2 The Consultant shall perform its services consistent with the professional skill and care ordinarily provided by professionals in the same discipline practicing in the same or similar locality under the same or similar circumstances. The Consultant shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Consultant identifies the following representative who is authorized to act on behalf of the Consultant with respect to the Project.

*(List name, address, and other information.)*

Michael Watts  
Tioga Town Center  
12921 SW 1st Rd, STE 205  
Newberry, FL 32669  
352-264-3350

§ 2.4 If required in the jurisdiction where the Project is located, the Consultant shall be licensed to perform the services described in this Agreement, or shall cause such services to be performed by appropriately licensed professionals.

§ 2.5 The Consultant shall coordinate its services with those services provided by the Owner and the Owner's other consultants. The Consultant may communicate with the Owner's other consultants for the purposes of performing its services on the Project. The Consultant shall keep the Owner reasonably informed of any such communications. The Consultant shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's other consultants. The Consultant shall provide prompt written notice to the Owner if the Consultant becomes aware of any error, omission, or inconsistency in such services or information.

§ 2.6 The Consultant shall keep the Owner reasonably informed of the progress of the Consultant's services.

§ 2.7 **Insurance.** The Consultant shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Consultant normally maintains, the Owner shall reimburse the Consultant for any additional cost as set forth in Section 8.6.3.

§ 2.7.1 Commercial General Liability with policy limits of not less than One-million dollars (\$ 1,000,000.00 ) for each occurrence and One-million dollars (\$ 1,000,000.00 ) in the aggregate for bodily injury and property damage.

§ 2.7.2 Automobile Liability covering vehicles owned by the Consultant and non-owned vehicles used by the Consultant with policy limits of not less than One-million dollars (\$1,000,000.00 ) per claim and One-million dollars (\$1,000,000.00 ) in the aggregate for bodily injury and property damage along with any other statutorily required automobile coverage.

§ 2.7.3 The Consultant may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections 2.7.1 and 2.7.2.

§ 2.7.4 Workers' Compensation at statutory limits and Employers' Liability with a policy limit of not less than Statutory Minimum (\$ ).

§ 2.7.5 Professional Liability covering the negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Five-hundred thousand (\$500,000.00 ) per claim and One-million dollars (\$ 1,000,000.00 ) in the aggregate.

§ 2.7.6 The Owner shall be an additional insured on the Consultant's primary and excess insurance policies for Commercial General Liability and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations.

§ 2.7.7 The Consultant shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.7. The certificates will show the Owner as an additional insured on the Commercial General Liability, Automobile Liability, and any excess policies.

§ 2.8 Time. The Consultant shall provide its services within the time limits established in the Consultant's Schedule, or within the Deliverable(s) Time Limit(s) set forth below. The Consultant shall immediately inform the Owner of any circumstances which may cause a delay.  
(Check one or both selections below.)

- Consultant's Schedule: As soon as practicable after the date of this Agreement, the Consultant shall submit, for the Owner's approval, a schedule for the performance of the Consultant's Services. If relevant to the Consultant's Services, the schedule initially shall include anticipated dates for design phase milestones, commencement of construction, and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Consultant or Owner.
- Deliverable(s) Time Limit: The Consultant shall provide the following deliverable(s) within the time limit(s) set forth below. Unless otherwise indicated below, time shall be calculated based on calendar days from the date of this Agreement.

Deliverable(s) <i>(Describe the deliverable(s))</i>	Time Limits <i>(Insert number of calendar days and, where appropriate, if time is to be measured from a separate written authorization from the Owner)</i>

**ARTICLE 3 ADDITIONAL SERVICES**

§ 3.1 Additional Services may be provided after execution of this Agreement without invalidating the Agreement.

§ 3.2 The Consultant shall promptly notify the Owner upon recognizing the need to perform Additional Services. The Consultant, however, shall not proceed to provide such services until the Consultant receives the Owner's written authorization. Except for services due to the fault of the Consultant, any Additional Services provided in accordance with this Section 3.2 shall entitle the Consultant to compensation pursuant to Section 8.2.

#### ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project. Within 15 days after receipt of a written request from the Consultant, the Owner shall furnish the requested information as necessary and relevant for the Consultant to evaluate, give notice of, or enforce lien rights.

§ 4.2 The Owner identifies the following representative who is authorized to act on the Owner's behalf with respect to the Project.

(List name, address, and other information.)

Brian Ragan  
8016 Mobley Rd.  
Brooksville, FL 34601  
352-797-7050

§ 4.3 The Owner shall render decisions and approve the Consultant's submittals, if any, in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's services.

§ 4.4 The Owner shall coordinate the services of its other consultants with those services provided by the Consultant. The Owner shall provide the Consultant with a list of other consultants on the Project whose services relate to the Consultant's services. The Owner shall also, upon written request, furnish the Consultant with copies of the scope of services in contracts between the Owner and such other consultants. The Owner shall require that its other consultants maintain professional liability insurance as appropriate to the services provided.

§ 4.5 The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Consultant to furnish them as an Additional Service, when the Consultant requests such services and demonstrates that they are reasonably required for the Consultant to be able to perform its services.

§ 4.6 The Owner shall provide prompt written notice to the Consultant if the Owner becomes aware of any fault or defect in the Project, including errors, omissions, or inconsistencies in the Consultant's Services.

#### ARTICLE 5 COPYRIGHTS AND LICENSES

§ 5.1 Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Consultant and the Consultant's subconsultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials in digital or physical form.

§ 5.2 The Consultant and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party 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 the Owner and Consultant intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions or comply with protocols established for the Project, if any.

§ 5.3 The Consultant and the Consultant's subconsultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory, and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Consultant's subconsultants.

§ 5.4 Upon execution of this Agreement, the Consultant grants to the Owner a nonexclusive license to use the Consultant's Instruments of Service solely and exclusively for purposes of designing, constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Consultant shall obtain similar nonexclusive licenses from its subconsultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Owner's consultants and contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for the purposes of designing, constructing, using, maintaining, altering and adding to the Project. If the Consultant rightfully terminates this Agreement for cause as provided in Section 7.4, the license granted in this Section 5.4 shall terminate.

**§ 5.4.1** In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Consultant and the Consultant's subconsultants from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Consultant and its subconsultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 5.4.1. The terms of this Section 5.4.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 7.4.

**§ 5.5** Except for the licenses granted in this Article 5, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge, or otherwise transfer any license granted herein to another party without the prior written agreement of the Consultant. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Consultant and the Consultant's subconsultants.

## **ARTICLE 6 CLAIMS AND DISPUTES**

### **§ 6.1 General**

**§ 6.1.1** The Owner and Consultant shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date the Project is sufficiently complete so that the Owner can utilize it for its intended use. The Owner and Consultant waive all claims and causes of action not commenced in accordance with this Section 6.1.1.

**§ 6.1.2** To the extent damages are covered by property insurance, the Owner and Consultant waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. The Owner or the Consultant, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

**§ 6.1.3** The Consultant and Owner waive consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 7.7.

### **§ 6.2 Mediation**

**§ 6.2.1** Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Consultant's services, the Consultant may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

**§ 6.2.2** The Owner and Consultant shall endeavor to resolve claims, disputes, and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

**§ 6.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 6.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and Consultant do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

- Arbitration pursuant to Section 6.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

### **§ 6.3 Arbitration**

**§ 6.3.1** If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question, arising out of or related to this Agreement, subject to, but not resolved by, mediation shall be subject to arbitration, which unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

**§ 6.3.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute, or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute, or other matter in question.

**§ 6.3.2** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

**§ 6.3.3** The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

### **§ 6.3.4 Consolidation or Joinder**

**§ 6.3.4.1** Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 6.3.4.2** Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**§ 6.3.4.3** The Owner and Consultant grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Consultant under this Agreement.

## **ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1** If the Owner fails to make payments to the Consultant in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Consultant's option, cause for suspension of performance of services under this Agreement. If the Consultant elects to suspend services, the Consultant shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the

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Consultant shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Consultant shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Consultant's services. The Consultant's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 7.2 If the Owner suspends the Project or the Consultant's services, the Consultant shall be compensated for services performed prior to notice of such suspension. When the Project or the Consultant's services are resumed, the Consultant shall be compensated for expenses incurred in the interruption and resumption of the Consultant's services. The Consultant's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

§ 7.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Consultant for the Owner's convenience and without cause.

§ 7.6 In the event of termination not the fault of the Consultant, the Consultant shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 7.7.

§ 7.7 Termination Expenses are in addition to compensation for the Consultant's services and include expenses directly attributable to termination for which the Consultant is not otherwise compensated, plus an amount for the Consultant's anticipated profit on the value of the services not performed by the Consultant.

§ 7.8 The Owner's rights to use the Consultant's Instruments of Service in the event of a termination of this Agreement are set forth in Article 5 and Section 8.7.

## ARTICLE 8 COMPENSATION

§ 8.1 The Owner shall compensate the Consultant for services described in Article 2 as follows:

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

Base Price - One-hundred forty-four thousand Eight-hundred fifty dollars (\$144,850) per attached proposal (Exhibit C)

Additional services and alternates (if selected by owner) will be compensated per attached proposal (Exhibit C)

§ 8.2 The Owner shall compensate the Consultant for Additional Services that may arise during the course of the Project as follows:

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

Per Consultant's Hourly Rate Schedule listed in Section 8.3

§ 8.3 The hourly billing rates for services of the Consultant and the Consultant's subconsultants, if any, are set forth below. The rates shall be adjusted in accordance with the Consultant's and Consultant's subconsultants' normal review practices.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

As listed in Exhibit C "Consultant's Proposal"

Employee or Category

Rate

§ 8.4 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Consultant's invoice. Amounts unpaid Sixty ( 60 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Consultant. *(Insert rate of monthly or annual interest agreed upon.)*

Two percent ( 2%)

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

#### § 8.6 Reimbursable Expenses

§ 8.6.1 Reimbursable Expenses are in addition to compensation for the Consultant's professional services and include expenses incurred by the Consultant directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Consultant's subconsultants expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Consultant's subconsultants;
- .8 All taxes levied on professional services and on reimbursable expenses;
- .9 Other similar Project-related expenditures, if authorized in advance by the Owner.

§ 8.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Consultant plus an administrative fee of Five percent ( 5%) of the expenses incurred.

§ 8.6.3 If the insurance requirements listed in Section 2.7 exceed the types and limits the Consultant normally maintains and the Consultant incurred or will incur additional costs to satisfy such requirements, the Owner shall reimburse the Consultant for such costs as set forth below:

**Architect shall maintain insurance as set forth in "Exhibit A - Consultant's Insurance Requirements." If there are conflicts between requirements in this document and Exhibit A, the most stringent requirement shall apply.**

§ 8.6.4 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

#### § 8.7 Compensation for Use of Consultant's Instruments of Service

If the Owner terminates the Consultant for its convenience under Section 7.5, or the Consultant terminates this Agreement under Section 7.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Consultant's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

Zero dollars \$(0)

## ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 6.3.

§ 9.2 The Owner and Consultant, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Consultant shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

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

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

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

§ 9.6 Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential." If the Owner or Consultant transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 9.6.1.

§ 9.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants, and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Agreement.

## ARTICLE 10 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

## ARTICLE 11 SCOPE OF THE AGREEMENT

§ 11.1 This Agreement represents the entire and integrated agreement between the Owner and the Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Consultant. In the event of a conflict between the terms and conditions of this C103™–2015, Standard Form Agreement between Owner and Consultant and an attached exhibit, the terms and conditions of the C103–2015, Standard Form Agreement between Owner and Consultant shall take precedence.

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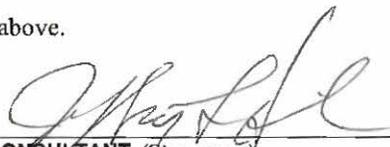
§ 11.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document C103™-2015, Standard Form of Agreement Between Owner and Consultant.
- .2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

- .3 Scope of Services Exhibit(s) listed in section 2.1
- .4 Other documents:  
*(List other documents hereby incorporated into the Agreement.)*

Exhibit A - Consultant's Insurance Requirements  
Exhibit B - HCSD Standard Addendum to Agreements  
Exhibit C - Consultant's Proposal

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

<hr/> <p>OWNER (Signature)</p> <hr/> <p>(Printed name and title)</p>	 <hr/> <p>CONSULTANT (Signature)</p> <p>Jeffrey L. Heiken, Principal</p> <hr/> <p>(Printed name and title)</p>
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**A. GENERAL**

1. The Architect/Engineer shall procure and maintain all insurance requirements and limits as set forth below, at his or her own expense, for the length of time set forth in Contract requirements. The Architect/Engineer shall continue to provide evidence of such coverage to State of Florida on an annual basis during the aforementioned period including all of the terms of the insurance and indemnification requirements of this agreement. All below insurance policies shall include a provision preventing cancellation without thirty (30) days’ prior notice by certified mail. A completed Certificate of Insurance shall be filed with the Owner and Facilities & Construction within ten (10) days after the date of the Notice of Award, said Certificate to specifically state the inclusion of the coverages and provisions set forth herein and shall state whether the coverage is “claims made” or “per occurrence”.

**B. COMMERCIAL GENERAL LIABILITY INSURANCE (CGL)**

1. This insurance must protect the Architect/Engineer from all claims for bodily injury, including death and all claims for destruction of or damage to property (other than the Work itself), arising out of or in connection with any operations under this Contract, whether such operations be by the Architect/Engineer or by any Subcontractor under him or anyone directly or indirectly employed by the Architect/Engineer or by a Subcontractor. All such insurance shall be written with limits and coverages as specified below and shall be written on an occurrence form.

General Aggregate	\$1,000,000
Products – Completed Operations Aggregate	\$1,000,000
Each Occurrence	\$1,000,000
Personal Injury	\$1,000,000

The following coverages shall be included in the CGL:

- a. Additional Insured status in favor of the Hernando County School Board
- b. The policy shall be endorsed to be **primary and non-contributory** with any insurance maintained by Additional Insureds.
- c. A waiver of Subrogation in favor of all Additional Insured parties.

**C. AUTOMOBILE LIABILITY INSURANCE – Includes business auto liability covering liability arising out of any auto (including owned, hired and non-owned autos.**

1. Combined Bodily Injury and Property Damage Liability
  - a. Combined Single Limit (each accident): \$1,000,000

- b. Coverages: Specific waiver of subrogation

**D. WORKERS' COMPENSATION INSURANCE**

1. The Architect/Engineer shall procure and maintain Workers' Compensation Insurance at his or her own expense during the life of this Contract, including occupational disease provisions for all employees per statutory requirements. Policy shall contain a waiver of subrogation in favor of the Hernando County School Board.
2. The Architect/Engineer shall also require each Subcontractor to furnish Workers' Compensation Insurance, including occupational disease provisions for all of the latter's employees, and to the extent not furnished, the Architect/Engineer accepts full liability and responsibility for Subcontractor's employees.
3. In cases where any class of employees engaged in hazardous work under this Contract at the site of the Project is not protected under the Workers' Compensation statute, the Architect/Engineer shall provide, and shall cause each Subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise protected.

**E. PROFESSIONAL ERRORS AND OMISSIONS LIABILITY INSURANCE –**

The Architect/Engineer promises and agrees to maintain in full force and effect an Errors and Omissions Professional Liability Insurance Policy in the amounts (indicated in the following table) as minimum coverage or such other minimum coverage as determined by the Owner and approved by the Facilities Operations. The policy, including claims made forms, shall remain in effect for the duration of this Agreement and for at least three years beyond the completion and acceptance of the Work. The Architect/Engineer shall be responsible for all claims, damages, losses or expenses, including attorney's fees, arising out of or resulting from the performance of Professional Services contemplated in this Agreement, provided that any such claim, damage, loss or expense is caused by any negligent act, error or omission of the Architect/Engineer, any consultant or associate thereof, or anyone directly or indirectly employed by Architect/ Engineer. The Architect/Engineer shall submit a Certificate of Insurance verifying said coverage at the signing of this Agreement and also any notices of Renewals of said policy as they occur.

<b>For a Fixed Limit of Construction Cost</b>	<b>Minimum Coverage per Claim</b>	<b>Minimum Coverage in the Aggregate</b>
\$999,999 and under	\$1,000,000	\$1,000,000
\$1,000,000 to \$4,999,999	\$1,000,000	\$1,000,000
\$5,000,000 to \$19,999,999	\$1,000,000	\$2,000,000
\$20,000,000 and Above	\$2,000,000	\$2,000,000



**STANDARD ADDENDUM TO AGREEMENTS WITH  
THE HERNANDO COUNTY SCHOOL BOARD**

**WHEREAS**, the undersigned has entered into an Agreement or Contract (hereinafter Agreement) with the Hernando County School Board; and,

**WHEREAS**, the Agreement sets forth the general terms and conditions of the relationship between the parties; and,

**WHEREAS**, the undersigned acknowledges that the School Board is the contracting authority for the Hernando County School Board and there are certain standard contract terms expected to be in every agreement by the School Board; and,

**WHEREAS**, the undersigned hereby agrees that these standard terms are part of the Agreement with the School Board.

1. The Contractor hereby agrees to indemnify, defend and hold the School Board harmless from and against any and all damages of any nature whatsoever which are caused or materially contributed to by the negligent, reckless or intentional acts of the Indemnifying Party.

2. To the extent that the agreement requires the School Board to indemnify Contractor, it shall only be to the extent of the limits set forth in §768.28(5), Fla. Stat. and then only for the negligent or wrongful act or omission of any officer or employee of the School Board acting within the scope of the officer's/employee's office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant. Further, except as specifically provided herein, the School Board does not waive any defense of sovereign immunity. It is further understood and agreed by the parties to this agreement that no officer or employee may be held personally liable except as provided by §768.28(9), Fla. Stat. Notwithstanding the foregoing, the School Board intends to avail itself of the benefits of §768.28 and of other statutes and common law governing sovereign immunity to the fullest extent possible. However, in no event will the School Board's liability under this provision exceed the sum of the lesser of the following: (a) the amount paid by the School Board to Contractor or (b) the amounts identified as statutory limits pursuant to §768.28, Fla. Stat. if applicable. Nothing in this Agreement is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

3. The parties agree to each pay their own attorneys' fees and costs relating to the negotiation of the Agreement and this Addendum and in relation to any action to enforce the terms of either document.

4. As may be applicable, all persons providing goods or services to the School Board pursuant the Agreement shall undergo the necessary background screening described in section 1012.465, Florida Statutes at their own cost before coming onto School Board property.

5. If the Agreement requires the expenditure of funds for more than one fiscal year, the Agreement shall be subject to termination by the School Board without cause upon a thirty (30) day notice.

6. Any conflict between the terms of this Addendum and the parties original Agreement or subsequent modifications thereof are to be resolved in favor of this Addendum.

7. The Agreement and this Addendum are to be construed in accordance with the laws of the State of Florida, and the parties hereby agree that performance of the terms and provisions of the Agreement are to be performed solely within the State of Florida. The Parties agree that the Circuit Court for the Fifth Judicial Circuit, Hernando County, Florida (hereinafter "Court"), shall have sole and exclusive jurisdiction to enforce the terms of this Agreement, notwithstanding any provisions in the Agreement to the contrary, and the Parties further agree that they will present any disputes under this Agreement, including, without limitation, any claims for breach or enforcement of this Agreement, exclusively to the Court.

8. The payment obligation of the School Board created by the Agreement is conditioned upon the availability of funds that are appropriated or allocated for the payment of services or products. If such funds are not allocated and available, the Agreement may be terminated by the School Board at the end of the period for which funds are available. The School Board shall notify the Contractor at the earliest possible time before such termination. No penalty shall accrue to the School Board in the event this provision is exercised, and the School Board shall not be obligated or liable for any future payments due or for any damages as a result of such termination.

9. If, and to the extent the agreement provides for the payment of any applicable sales taxes, the Parties acknowledge that the School Board is an entity which is exempt from the same as provided by 212.08(6), Fla. Stat.

10. The Parties agree that in the event Contractor files for bankruptcy, insolvency or receivership during the term of this agreement, the School Board may, at its option, terminate and cancel said contract, in which event all rights hereunder shall immediately cease and terminate.

11. Neither party shall be liable to the other, nor deemed in default under this Agreement to the extent that such party's performance under this Agreement is rendered impossible, impractical, or prevented by reason of force majeure. For purposes of this Agreement, the term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without fault or negligence on behalf of either party. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; labor disputes; civil disorders; fires; floods; hurricanes, epidemics, pandemics, government regulations, and the issuance or extension of existing government orders of the United States, the State of Florida, or local county and municipal governing bodies, which prevents performance of the contract for all or part of the term of the Agreement.

12. Notwithstanding any provision to the contrary in the agreement, all payments due from the School Board for non-construction services hereunder shall be governed by the provisions

of Chapter 218, Florida Statutes.

13. If, and to the extent that the agreement provides for reimbursement of travel and related expenses, the Parties agree that such reimbursements shall be subject to the reimbursement schedules contained in Section 112.061, Florida Statutes.

14. Contractor confirms that neither it nor its principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by any governmental department or agency. This certification is a material representation of fact upon which reliance will be placed when the School Board executes this agreement. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to the other remedies available to School Board, School Board may terminate the Agreement for default by Contractor.

15. E-Verify. Pursuant to Fla. Stat. § 448.095, Contractor shall use the U.S. Department of Homeland Security's E-Verify system <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement. If Contractor enters into a contract with a subcontractor, the subcontractor must provide Contractor with an affidavit stating the subcontractor does not employ, contract with, or subcontract with an unauthorized alien and the Contractor shall provide a copy of such affidavit to the School Board upon receipt and shall maintain a copy for the duration of the Agreement. Failure to comply with this provision is a material breach of the Agreement and the School Board may choose to terminate the Agreement at its sole discretion and seek damages pursuant to Florida Statute. ~~By signing below, Contractor affirms that it is registered with and uses the E-Verify system, is otherwise in compliance with §448.095, Fla. Stat., and acknowledges that it is required to maintain such compliance throughout the term of any Contract entered between the parties.~~

16. Public records compliance provisions. Any confidentiality provisions in the Agreement shall be read in harmony with Florida's Public Records Act, Chapter 119, Florida Statutes. No provisions in the Agreement can be exercised to frustrate the requirements of the law for the release of records. The parties recognize that the School Board is a governmental entity, subject to Florida law regarding public access to records under Florida Statute, Chapter 119. As such, the Parties agree that only such information as is exempt and confidential under the provisions of law shall be considered confidential under the Term of this agreement and Any confidentiality provisions in the Agreement shall be read in harmony with Florida's Public Records Act, Chapter 119, Florida Statutes. No provisions in the Agreement can be exercised to frustrate the requirements of the law for the release of records. To the extent Contractor provides School Board any information which it believes is confidential or exempt, Contractor shall notify School Board of the specific information that it believes is confidential, as well as the basis for the exemption. Additionally, to the extent that the Contractor has any obligation to act in agency for the School Board, it shall maintain its records subject to section 119.0701, Fla. Stat. If and to the extent that contractor has access to any other confidential information regarding the School Board (such as security information as contemplated by section 119.071(c), Fla. Stat.), the Contractor agrees to use reasonable measures to maintain the confidentiality of such information.

17. To the extent Contractor maintains information that is subject to a public record request, it shall provide the public access to such records in accordance with, and subject to the applicable statutory terms and fees. Failure to do so will be considered a material breach of the original Agreement resulting in immediate termination with no penalty to School Board, and Contractor will indemnify and hold the School Board harmless for any and all damages and expenses suffered as a result of the material breach and contract termination. Contractor must comply with Florida public records laws, including but not limited to chapter 119, Florida Statutes and section 24 of article I of the Constitution of Florida, and specifically agrees to:

a. Keep and maintain public records required by the School Board in order to perform the service under this agreement; and

b. Upon request from the School Board's custodian of public records, provide the School Board with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119, Florida Statutes, or as otherwise provided by law; and

c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the School Board; and

d. Upon completion of the contract, transfer, at no cost, to the School Board all public records in possession of the contractor or keep and maintain public records required by the School Board to perform the service. If the contractor transfers all public records to the School Board upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the School Board, upon request from the School Board's custodian of public records, in a format that is compatible with the information technology systems of the School Board.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 919 N. BROAD STREET, BROOKSVILLE, FL 34601, [Jordan k@hcsb.k12.fl.us](mailto:Jordan_k@hcsb.k12.fl.us) or (352) 797-7009.**

Notwithstanding any other provisions of law or statutory interpretation, failure of the Contractor to abide by the terms of these public records provisions shall be deemed a material breach of this agreement and the School Board may enforce the terms of this

provision in the form of a court proceeding and shall, as a prevailing party, be entitled to reimbursement of all reasonable attorney's fees and costs associated with that proceeding. This

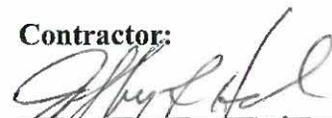
provision shall survive any termination or expiration of the contract.

18. If the Contractor receives any student information / records as a result of this agreement, it will maintain any such information / records as confidential and will not release same to any third parties without the express written approval of the School Board, except third parties who are essential to Contractor's delivery of its services to the School Board and who are bound to maintain the confidentiality of student information/records, and prohibited from unauthorized redisclosure of such information. Furthermore, Contractor agrees to maintain and utilize all such student information/records in accordance with the FERPA regulations and only as provided for in the Agreement and this Addendum. If student information/records are requested by way of subpoena or court order, Contractor shall notify the School Board of such request in writing including a copy of the subpoena or order and shall otherwise comply with the FERPA regulations.

19. Contractor acknowledges that it will comply with all applicable Florida and Federal laws, ordinances, rules and regulations.

***Signed and dated by authorized representatives as provided below:***

**Contractor:**

  
Printed Name: Jeffrey L. Herken  
Title: Principal  
Date: 10/3/22

Approved as to Form

*Nancy McClain Alfonso*

General Counsel, HCSB

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September 21, 2022

Brian Ragan  
Director of Facilities & Construction  
Hernando County School District  
8016 Mobley Road  
Brooksville, Florida 34601

**RE: Commissioning Services for Central High School Buildings 1-6, 28 and Chiller Plant**

Thanks for the opportunity and we look forward to working with you and your team. Our proposed services and understanding of the project, includes the effort required to perform commissioning services as summarized in the Scope of Work below:

***Systems to be Commissioned***

1. HVAC
2. Building Automation

***Design Phase***

1. Review existing conditions assessment and supplement as needed.
2. Facilitate a Design Phase Cx Scope meeting to review scope, process, responsibilities, etc.
3. Development of the initial project-specific Commissioning Plan.
4. Production of the General Commissioning Requirements Specification as well as discipline specific specifications for inclusion by the Design Professional in the Bid Documents.
5. Review and comment on the following phases of design:
  - a. Schematic Design
  - b. Design Development
  - c. Construction Documents
6. Facilitate a reconciliation meeting to ensure Cx comments have been addressed.

***Construction Phase***

1. Develop and implement the Cx Plan.
2. Coordination and integration of commissioning activities into the project construction schedule with the assistance of the Builder.

3. Develop Pre-Functional Checklists for all equipment and distribution systems related to commissioned systems.
4. Development of Systems Functional Performance Test procedures.
5. Leadership of an onsite “kickoff” meeting to explain, review, and discuss commissioning procedures, roles & responsibilities, purposes, etc., plus participation in coordination meetings during construction to further clarify commissioning procedures.
6. Field observations visits to document the installation and start-up of systems.
7. Periodic attendance at construction site meetings, as required, to facilitate the commissioning process.
8. Review contractor developed submittals including product submittals, O&M Manual, Start-up plans, Automation programming, Training Plan, TAB Report, Punchlist, Record Drawings.  
Development of Cx issues database with photographs, observations and recommendations to manage the resolution of items resulting from field reports.

### ***Acceptance Phase***

1. Witness and oversight of Functional Performance Test all new equipment and automation.
2. Documentation of deficiencies and action items stemming from Functional Performance Tests.
3. Recommendations of systems acceptance or rejection based on Functional Performance Test results.
4. Production and distribution of Draft Commissioning Report at completion of functional testing.
5. Consolidation and turnover to the Owner of all Commissioning-related documents in searchable electronic (PDF) format, including narrative report(s), itemization of products and equipment comprising the systems being commissioned, checklists and field observation reports, FPT results, deficiency log(s), and training-related documents.
6. Review of final contractor training plans, Operation & Maintenance Manuals, Systems Manual, Test-And-Balance reports, as-built drawings, finalized products & equipment spreadsheet, and other “closeout” documents related to the systems being commissioned.
7. Working with TAB and Controls contractor, ensure systems are optimized maximum efficiency and effectiveness.
8. Witness and oversight of Training on commissioned systems.

### ***Occupancy Phase***

1. 10-month warranty visit and/or testing of commissioned building systems prior to end of the warranty period, including but not limited to “off-season” performance tests of the HVAC system.
2. Analysis of building performance parameters – such as HVAC trending data – compared to the and energy baseline and projections.
3. Interviews with Owner’s staff, plus reviews of occupant surveys, to confirm proper operation and maintenance and to discover or fully understand concerns and difficulties with commissioned building systems.
4. Tracking of issues, discrepancies, and other problems with commissioned building systems through resolution.

5. Production and distribution of a Final Commissioning Report after the post-occupancy phase to document the results of Commissioning.

**Compensation**

1. We propose to execute the above scope for a lump sum of **\$144,850**.
2. Services will be billed as a percentage of completion according to the following fee schedule:

<u>Cx Services</u>	<u>Cx Fee</u>
Design Phase	\$16,980
Construction Phase	\$57,050
Acceptance Phase	\$65,080
Occupancy Phase	\$5,740
<b>Total Fee and Expenses</b>	<b>\$144,850</b>

3. Alternates fees for Additional Commissioning:

<u>Cx Services</u>	<u>Cx Fee</u>
Lighting	\$3,960
Security	\$2,640
Fire Alarm	\$5,280
Current Facilities Requirement O&M Plan	\$2,970
Ongoing Cx Plan	\$1,980

4. Hourly Rates:

<u>Position</u>	<u>Hourly Rate</u>
Principal	\$215
Project Manager	\$195
Professional Engineer	\$180
Senior CxA	\$165
CxA	\$135
Project Coordinator	\$70

**Fee Qualifications**

1. Proposal is based on Hernando School District **RFQ#0251-201-2203**.
2. The contractor will demonstrate comprehensive system functionality during the acceptance phase and will provide all tools and instrumentation to checkout and functionally test equipment and systems to the satisfaction of the Owner as recommended by AEI Cx. Indoor Air Quality and material testing is not included.

3. Retesting due to non-conforming work, incomplete work or testing failures requiring additional or extended site visits will result in additional services.
4. AEI Cx will provide technical resources and assist the contractor and A/E in resolving deficiencies to the extent possible. However, the contractor and the A/E are ultimately responsible for reconciling all design and construction issues.
5. Punch-list services are not included in this scope of work.
6. During commissioning of the HVAC controls system, the installing technician(s) and system programming person shall be present to make onsite adjustments.
7. The Contractor will update and integrate functional testing into the project construction schedule as coordinated in the commissioning and construction progress meetings.
8. Commissioning services for any temporary systems or construction is not included.

We look forward to your acceptance of this proposal and are eager to begin our work on this exciting new project. Please contact me if you have any questions regarding this proposal.

Sincerely,

**AFFILIATED ENGINEERS, INC.**

A handwritten signature in blue ink, appearing to read 'Michael Watts'.

Michael Watts  
Project Manager