

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
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NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions Contract (No. C-700, 2002 Edition) of the Engineers Joint Contract Documents Committee. Their provisions are interrelated, and a change in one may necessitate a change in the other.

SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of August 14, 2021 REV 9-18-21 (:Effective Date")

Between Oceanwalk Condominium Assoc., Inc., 2225 Highway A1A, Indian Harbor Beach, FL 32937 Owner/Association")

and Keystone Engineering & Consulting, Inc. ("Keystone/Engineer")

Engineer agrees to provide the services described below to Owner for PHASE I SERVICES ("Project").

Description of Engineer's Services:

Engineer will provide Phase I services as itemized below. Project will include all **walkways, parking garage, parking deck, and collateral items.** Project includes one, nine-story post-tensioned building. The inspection will include a near-term initial walk-through to identify any immediate visual safety or structural concerns in advance of the comprehensive Phase I inspection and report. The inspection will also include the location and identification of visual or detectable concrete spalling due to reinforcing steel corrosion, and vulnerable aspects of the structure causing accelerated spalling. The inspection will include reinforced concrete elements such as the horizontal walkway slabs, beams, columns, headers, and sills. The inspection will also include observations of collateral elements such as exterior slab floor finishes, railings for fall protection, exterior paint and protective coatings, all as necessary to consider for a structural concrete restoration and/or preventative maintenance project.

The report will include the information we obtained from the recent balcony restoration project, to provide for a complete structural report.

For the garage portion, we will inspect all visible components of the slabs and column. If we see anything that is concerning and we feel requires further investigation, we will advise and discuss the additional actions recommended.

We will also comment on the structural design plans assuming we have enough of the original plans to evaluate. We can also comment on the known structural aspects gleaned from the balcony restoration project.

I. Phase I SURVEY AND INSPECTION REPORT-Included in this proposal

A. ONSITE INSPECTION

Keystone personnel will inspect all applicable areas available for access using both visual and acoustical inspection (non-destructive) techniques to estimate the extent of repairs required. The inspection will be limited to areas accessible without high reach lift equipment. All shutters are to be open by others before inspection is commenced and personal belongings should be removed from the inspection area. The inspection for this proposal is a non-destructive inspection to estimate visual and detectable building conditions.

1. The inspection will be performed by a Florida licensed engineer and trained assistants.

2. Access to inspection areas will be provided by Owner personnel.
3. The inspection process and methods will be generally in accordance with the International Concrete Repair Institute (ICRI), the American Concrete Institute (ACI), and the National Association of Corrosion Engineers (NACE) recommendations including:
 - a. ACI 201.1R-92, Guide for Making a Condition Survey of Concrete in Service.
 - b. ACI 364.1R-94 Guide for the Evaluation of Structures Prior to Rehabilitation
4. All survey findings related to the Repair Project as applicable will be recorded on scaled maps to be utilized for project estimating, repair execution and ultimately as an historical record of the as-built repair project.
5. A written report will include applicable recommendations and feasible options for corrosion mitigation for the reinforcing steel.
6. Provide a comprehensive written report binder including as applicable: executive summary of findings and recommendations, written report discussing specifics of the project and repair recommendations and options, itemized list of estimated quantities of the project, budget estimate for completion of the recommended repairs, itemized list of repair needs by area, scaled field maps illustrating anticipated repair location and digital photographs representing each typical repair located.
7. Participate in meeting and discussion of report findings and recommendations with Board members/ home-owners, including a PowerPoint presentation, if necessary, of key project elements. Participate in question and answer session to educate owners as to the project requirements to assist in the decision making process.

II. PHASE II BID PROCESS – Future, not included in this proposal

A. PROJECT MANUAL

Keystone will prepare a project manual for the project for the chosen work to solicit competitive bids from prequalified, properly licensed specialty restoration contractors. The project manual content will be based on discussions resulting from the Phase I process.

1. Project manual will include all needed documents for bidding purposes. The project manual will be available to prequalified bidders by both electronic and hard copy.
2. Project manual will include the following information:
 - a. Project directory and contact information
 - b. Bid invitations and bidder instructions
 - c. Bid form sheets with pricing, schedule and contact information
 - d. Contract document requirements
 - e. Project description
 - f. Summary of work requested
 - g. Insurance requirements
 - h. Payment Schedule
 - i. Jobsite conditions and requirements
 - j. Contractor responsibilities
 - k. Owner responsibilities
 - l. Safety requirements
 - m. Repair specifications and procedures
3. Scope of Work may include stripping, necessary concrete repairs, corrosion mitigation, new surface finishes, railing work and other items as agreed.

B. PREBID

Keystone will host an onside pre-bid with all prequalified restoration contractors to allow for the examination of the site and project conditions.

1. A PowerPoint overview of the project may be presented to the bidders.
2. A Question and answer session will be conducted.
3. A tour of the site and sample inspection of the areas
4. Addendums for bids will be issued as required.

C. RECEIPT OF BIDS

Sealed bids will be received at the time and at the place predetermined in the project manual.

1. Bids received late or unsealed may be rejected.
2. All sealed bids are to be opened in a semi-public fashion with representatives of both Owner and Keystone present to certify the results.
3. Keystone will tabulate the bid results on spreadsheets for cost comparison analysis.
4. Keystone will review bids for compliance, accuracy and cost.
5. Keystone will make a recommendation for contractor selection, contractor interviews or contractor negotiation and final scope of the concrete repair/corrosion mitigation project.

III. PHASE III CONSTRUCTION PROCESS – Future, not included in this proposal

A. PERMIT DOCUMENTS

Keystone will provide the necessary sealed engineering documents for the building permit to the restoration contractor awarded the project.

B. PROJECT SUPERVISION

Keystone will act as a representative of Owner in supervising the execution of the project as per the project manual requirements.

1. Review project submittals
2. After surface preparation, inspect surfaces and as necessary delineate the concrete excavation areas required. Concrete excavation controls will be strictly enforced throughout the project. Additional excavation work will be only at the direction of the project engineer or his designated inspector.
3. Inspect and approve completed excavations prior to pour of repair concrete. Ensure repair opening characteristics including proper geometry, depth, perimeter sawcut, surface profile and surface preparation.
4. Transfer dimensions of finished excavation openings onto survey field maps to record as built repair conditions, locations and tracking of contractor unit cost pay requests.
5. Provide post-pour inspection to certify repair concrete curing, absence of cracking and shrinking, proper surface texture and hardness.
6. Require water test before coating to ensure proper drainage and minimize standing water as best possible.
7. Oversee the installation of finish coatings, railings, corrosion mitigation solution and other aspects of the project to ensure compliance with the project manual, specifications and manufacturer's requirements.
8. Review contractor monthly payment requests. Ensure billable quantities are accurate, ensure retainage and other calculations are accurate, ensure proper lien releases are provided, certify pay request amount.

C. INSPECTION REPORTS

Keystone will provide written inspection reports of each field inspection on a weekly basis. Inspection reports can be sent electronically, hard copy or both. Inspection reports will be kept on file at Keystone's office and sent to Owner representatives, the contractor and the local building department.

D. MEETINGS

Keystone will hold regular jobsite meetings with the contractor representative, owner representative and Keystone representatives.

Owner and Engineer further agree as follows:

1.01 Basic Agreement

A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 9.01.

2.01 Payment Procedures

A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer's standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices are due and payable within thirty (30) days of receipt. If Owner fails to make any payment due Engineer for services and expenses within thirty (30) days after receipt of Engineer's invoice, the amounts due Engineer will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition to the foregoing, Engineer may, without liability, after giving seven (7) days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal. Any costs incurred to collect unpaid, past due invoices, including legal, will be added to the amount due.

3.01 Additional Services

A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.

B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer's employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any.

4.01 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. For cause

a. By either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.

b. By Engineer:

1). upon seven (7) days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

2. upon seven (7) days written notice if the Engineer's services for the Project are delayed or suspended for more than ninety (90) days for reasons beyond Engineer's control, or:

3. Upon seven (7) days written notice if owner has failed to make any payment due engineer for services and expenses within 30 days after receipt of engineer's invoice.

4. Engineer shall have no liability to Owner on account of the foregoing grounds for termination. Upon termination under this section, Engineer shall have no liability to owner for work performed by subsequent engineer on the project.

c. Notwithstanding the termination for cause under paragraph 4.01 A.1 this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven (7) days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than thirty (30) days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such thirty (30) day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to , but in no case more than, sixty (60) days after the date of receipt of the notice.

2 For convenience, by owner effective upon the receipt of notice by Engineer. If terminated for convenience Engineer shall be entitled to receive payment for all services provided through the date that engineer received notice. Engineer shall be entitled to receive all lost profits.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to thirty (30) days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files. Engineer shall be paid all fees to date of demobilization including lost profits and deferred fees earned but not billed.

5.01 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

6.01 Successors, Assigns, and Beneficiaries

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

7.01 General Considerations

A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties connection with Engineers services. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. Engineer shall not at any time supervise, direct or have control over any contractors work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractors work progress nor for any failure of any contractor to comply with laws and regulations applicable to contractors work.

C. Engineer neither guarantees nor warrants the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.

D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier or of any contractors agents or employees or any other persons. (except Engineers own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.

E. The general conditions for any construction contract documents prepared hereunder are to be the AIA 201-2017 Version. To the extent of any conflict between this agreement and the Standard General Conditions AIA 201-2017, this agreement and the project documents shall control. Arbitration of any claims or disputes as set forth in Article 15.4 of the AIA 201-2017 shall not be administered by the American Arbitration Association, but shall proceed in Brevard County, Florida under the Florida Arbitration Code Chapter 682. Florida Statutes.

F. All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents whether or not the Project is completed.

G. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to the total amount of compensation received by Engineer.

H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

8.01 Total Agreement/Waiver of Jury Trial/Attorney's Fees

A. This Agreement (*consisting of pages 1 to 8* inclusive together with any expressly incorporated appendix), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended supplemented, modified, or canceled by a duly executed written instrument executed by engineer and owner.

B. The parties to this Agreement hereby knowingly, voluntarily, and intentionally waive trial by jury in any action brought by either party against the other on any matters whatsoever concerning this agreement or any other agreement contemplated to be executed in conjuncture herewith, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of either party.

C. Owner is responsible for all costs of collection for unpaid invoices, including reasonable attorney's fees, **for collection of unpaid invoices**, whether suit be brought or not. **However, in any action for breach of contract or damages arising from this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and paralegal fees.**

9.01 Payment (Lump Sum Basis)

A. Using the procedures set forth in paragraph 2.01, Owner shall pay Engineer as follows:

1. Phase I - Walkways, Parking Garage, Parking Deck, Exterior Building Elements – A LUMP SUM AMOUNT of \$8800 payable at \$4800 deposit upon approval and signing of proposal and \$4000 at completion and submittal of report).

IN WITNESS WHEREOF, the parties hereto have executed this agreement, the Effective Date of which is indicated on page 1.

OWNER

Keystone Engineering and Consulting, Inc.:

By: Salvatore Marsico
for Ocean Walk Beach Condominium, Inc.

By: James E. Emory
James E. Emory, P.E., S.I.

Title : President

Title: President

Date Signed: September 18, 2021

Date Signed: September 18, 2021

License or Certificate No. and State _____
FL60965

Address for giving notices:

Keys Property Management Enterprise, Inc.
5505 N. Atlantic Ave.
Cocoa Beach, FL 32931

Address for giving notices:

18 Danube River Drive
Cocoa Beach, Florida 32931