

CONTRACT FOR DESIGN PROFESSIONAL/CONSULTING SERVICES

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CONTRACT FOR DESIGN PROFESSIONAL/CONSULTING SERVICES

Project Name: _____

Project No.: _____ (hereinafter the "Project")

This Contract (hereinafter "Contract") is made as of _____ by and between HEALTH CARE DISTRICT OF PALM BEACH COUNTY, an independent special taxing district created pursuant to Chapter 2003-326, Laws of Florida, as amended, hereinafter referred to as "DISTRICT", and _____, a _____ authorized to do business in the State of Florida, hereinafter referred to as DESIGN PROFESSIONAL, whose Federal I.D. number is _____.

WHEREAS, the DISTRICT desires to hire DESIGN PROFESSIONAL to provide professional services as described in this Contract;

WHEREAS, the DISTRICT has selected DESIGN PROFESSIONAL pursuant to the requirements of Section 287.055, Florida Statutes, the Consultants' Competitive Negotiation Act and related DISTRICT policies and procedures;

WHEREAS, negotiations pertaining to the services to be performed by the DESIGN PROFESSIONAL were undertaken with the DESIGN PROFESSIONAL, and this Contract incorporates the results of such negotiations

NOW, THEREFORE, in consideration of the mutual promises and consideration contained herein, the DISTRICT and the DESIGN PROFESSIONAL agree as follows:

SECTION 1 - DEFINITIONS

Additional Services: services requested under this Contract that were not included in Basic Services. Additional Services may be authorized through the execution of a DESIGN PROFESSIONAL Services Authorization.

Approval/Acceptance/Authorization: when referring to DISTRICT's approval, acceptance or authorization, such shall not constitute acceptance or approval of the buildability or suitability of any documents nor the approval or acceptance of the condition, status or progress of the work, but only establishes that the DISTRICT has verified such documents exist and that progress payments may be made. No liability shall flow to, be assumed by, or incurred by the DISTRICT for its acceptance, approval or authorization of any documents or work hereunder.

AVP Support Services: The Associate Vice President, Support Services Department through which the Construction Services Division reports.

Basic Services: all services described under Section 2 of this Contract and included in the Scope of Work attached hereto as **Exhibit A**.

Board: means the Health Care District of Palm Beach County Board of Commissioners.

CEO: The Chief Executive Officer through who the Chief Operating Officer and AVP, Support Services report.

Construction/Contract Documents: means the contract documents of the Contractor and shall include, but not be limited to the Advertisement for Bids, Instructions to Bidders, EBO Schedules, Bid Proposal, Bid Bond, Warranties, Notice of Intent to Award, Notice to Proceed, Certification of Substantial Completion, General Conditions, Supplemental General Conditions, Special Conditions, Technical Specifications, Design Documents whether preliminary or final, Engineering Drawings, Contract Drawings, Plans, Shop Drawings, Addenda and Change Orders executed pursuant to the Construction Documents.

DESIGN PROFESSIONAL: the firm selected to perform the services under this Contract.

DESIGN PROFESSIONAL Contract or Contract: consists of this Contract, the Request for Proposals, DESIGN PROFESSIONAL's proposal and presentation, any DPSAs and Supplements to a DPSA when executed and any notice to proceed under the Contract or a DPSA or a Supplement; all of which are incorporated herein by reference.

DESIGN PROFESSIONAL Services Authorization or DPSA: a document issued pursuant to this Contract that requests Additional Services under this Contract which includes an agreed upon scope of work, payment terms, schedule, deliverables and other project requirements.

Contractor: the person, firm, corporation or other entity who enters into an agreement with the DISTRICT to perform the construction work for the Project.

District Representative: The Construction Services Director of the DISTRICT's Support Services Department or his/her designee.

Governing Order of the Contract: is defined to be as follows: The Contract includes various documents which are essential parts for the services to be provided by the DESIGN PROFESSIONAL. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete Project. In case of discrepancy, the following precedence will govern the interpretation of the Contract:

1. This Contract and any amendments to this Contract;
2. DPSAs and Supplements to a DPSA;
3. Notices to Proceed;
4. Request for Proposals;
5. DESIGN PROFESSIONAL's proposal and presentation.

In the event that any conflicts cannot be resolved by reference to this "Governing Order of the Contract" definition, then District shall resolve the conflict in any manner which is acceptable to

District and which comports with the overall intent of the Contract.

Observe, Observation(s), Visit(s): site visits by the DESIGN PROFESSIONAL to determine if construction is being performed in compliance with the Construction/Contract Documents and to determine if the contractor is progressing according to the Project Schedule.

Professional Services or Services of a DESIGN PROFESSIONAL: has the meaning set forth in Florida Statutes Section 287.055, and means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping as defined by the laws of the state of Florida.

Supplement: an amendment to a Design Professional Services Authorization (DPSA).

Capitalized terms not defined in this Contract will have the meaning defined in the Construction/Contract Documents.

SECTION 2 - BASIC SERVICES OF DESIGN PROFESSIONAL

2.1 GENERAL.

- 2.1.1 Basic Services. DESIGN PROFESSIONAL shall provide to DISTRICT professional services in all phases of the Project as hereinafter provided in this Section 2 (the Basic Services). These services will include providing professional engineering and/or architectural consultation and advice and furnishing customary civil, structural, mechanical, electrical, and plumbing engineering and/or architectural services, surveying, geotechnical services, and regulatory services incidental thereto, as well as any specialty subconsultant services necessary to complete the required Scope of Work.
- 2.1.2 Scope of Work and Fee. The scope of work (hereinafter the Scope of Work) describes the Basic Services required for this Project. The Scope of Work and fees for this Contract are described in **Exhibit A** which is attached hereto and incorporated herein by reference. In the event of a conflict between the terms and conditions of the Contract and the terms and conditions of DESIGN PROFESSIONAL's proposal included in **Exhibit A**, the terms and conditions of the Contract shall control.
- 2.1.3 Design Standards. In the performance of this Contract, the DESIGN PROFESSIONAL shall become familiar with and perform such services in accordance with the any Design Standards provided to the DESIGN PROFESSIONAL. If DESIGN PROFESSIONAL fails to comply with the Standards, it shall redesign in compliance with the Standards at no additional cost to the DISTRICT.

- 2.1.4 Resiliency and Sustainability – Pursuant to Florida Statutes 255.2575, all buildings must be constructed to comply with a nationally recognized certification standards. DISTRICT owned new buildings shall be designed and constructed to LEED Certified or higher standard, the International Code Council’s International Green Construction Code (IgCC), or other state and/or nationally recognized high performance green building rating system deemed acceptable to the DISTRICT without obligation to apply for and/or obtain the official certificate. Such buildings will be operated and managed with reasonable consideration given to concepts from *LEED for Existing Buildings: Operations and Maintenance Rating System* or similar green building standards deemed acceptable to the DISTRICT. The project should use the most recent version of the Southeast Florida Regional Climate Change Compact’s Unified Sea Level Rise Projection to plan for future sea level rise.
- 2.1.5 Progress Reports. The DESIGN PROFESSIONAL shall provide progress reports in a format acceptable to the DISTRICT during each phase of the Contract at intervals established by the DISTRICT. However, the DISTRICT is entitled at all times to be advised of the status of the DESIGN PROFESSIONAL’s work and the details thereof and may request a progress report at any time.
- 2.1.6 Disputes and Specific Performance. All services will be performed by the DESIGN PROFESSIONAL to the satisfaction of the DISTRICT’s Representative or his designee. In accordance with the Governing Order of the Contract, the DISTRICT will decide all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of the Contract, the prosecution and fulfillment of the services hereunder and the character, quality, amount and value thereof. At all times the DESIGN PROFESSIONAL shall continue to perform the services required under this Contract and maintain its Project Schedule. In no event will the filing of a claim or the resolution or litigation thereof through administrative procedures or the courts relieve the DESIGN PROFESSIONAL from the obligation to timely perform the services required hereunder.
- 2.1.7 Multiple Projects. In the event the work covered by this Contract includes the preparation of construction plans, DESIGN PROFESSIONAL understands that the work may be divided into two or more construction projects by the DISTRICT’s Representative and that, if this is done, the DESIGN PROFESSIONAL will supply construction plans for each project.
- 2.1.8 DESIGN PROFESSIONAL must use project management software when and as requested by the DISTRICT.

2.2 SCHEMATIC DESIGN PHASE

- 2.2.1 Schematic Design Phase. For Architectural Projects: If required as part of the Scope of

Work and after written authorization to proceed:

- 2.2.1.1 Program Review. The DESIGN PROFESSIONAL shall review the program (if one is provided by the DISTRICT), to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the DISTRICT.
- 2.2.1.2 Evaluation. The DESIGN PROFESSIONAL shall provide a preliminary evaluation of the DISTRICT's program, schedule and construction budget requirements, each in terms of the other.
- 2.2.1.3 Alternatives. The DESIGN PROFESSIONAL shall review with the DISTRICT alternative approaches to design and construction of the Project.
- 2.2.1.4 Documents. Based on the mutually agreed upon program, schedule and construction budget requirements, the DESIGN PROFESSIONAL shall prepare for approval by the DISTRICT, schematic design documents consisting of drawings and other documents illustrating the scale and relationship of Project components ("Schematic Design Documents").
- 2.2.1.5 Number. The DESIGN PROFESSIONAL shall furnish five (5) copies of the Schematic Design Documents (2 full size and 3 reduced size) and electronic files in pdf and review them in person with the DISTRICT.
- 2.2.1.6 Permit List. Concurrent with the completion of the schematic design phase, the DESIGN PROFESSIONAL shall provide the DISTRICT with a list of all permits and approvals which are required and the date by which the DESIGN PROFESSIONAL must submit applications for each in order to meet Project Schedule requirements. The DESIGN PROFESSIONAL shall 1) have the DISTRICT present at all meetings with representatives of regulatory agencies; 2) have the DISTRICT's signature on all applications, and 3) not represent itself as an agent of the DISTRICT. The DISTRICT will pay directly all associated permit or regulatory fees within fifteen (15) days of notification of same by the DESIGN PROFESSIONAL.

2.3 DESIGN DEVELOPMENT PHASE.

2.3.1. Design Development Phase. For Architectural Projects: If required as part of the Scope of Work, and after written authorization to proceed:

- 2.3.1.1 Documents. Based on the approved Schematic Design Documents, as the case may be, and any adjustments authorized by the DISTRICT in the program, schedule or construction budget, the DESIGN PROFESSIONAL shall prepare for approval by the DISTRICT design development documents consisting of drawings and other documents to fix and describe the size and character of the Project as to

architectural, civil, structural, mechanical and electrical systems, materials and such other elements as may be appropriate (“Design Development Documents”).

- 2.3.1.2 Number. The DESIGN PROFESSIONAL shall furnish five (5) copies of the Design Development Documents (2 full size and 3 reduced size) and electronic files in pdf and present and review them in person with the DISTRICT at 100% completion status.

2.4 CONSTRUCTION DOCUMENT PHASE.

If required as part of the Scope of Work, and after written authorization to proceed:

- 2.4.1 Documents. Based on the approved Design Development Documents, as the case may be, and any further adjustments in the scope of the Project or in the construction budget authorized by the DISTRICT, the DESIGN PROFESSIONAL shall prepare, for approval by the DISTRICT, Construction Documents consisting of drawings and specifications setting forth in detail the requirements for the construction of the Project. Drawings shall be prepared using AutoCAD. Specifications shall be organized and prepared in accordance with Construction Specifications (CSI) Institute’s Manual of Practice.
- 2.4.2 Review. The DESIGN PROFESSIONAL shall review the DISTRICT furnished front-end documents, general conditions, and technical specifications and advise the DISTRICT of any conflicts or inconsistencies with DESIGN PROFESSIONAL’s specifications.
- 2.4.3 Permit List. The DESIGN PROFESSIONAL shall provide the DISTRICT with a status report on all approvals and permits required to construct the Project which includes confirmation that all comments from the regulatory agencies have been incorporated into the bid documents prepared by the DESIGN PROFESSIONAL.
- 2.4.4 Construction Cost Update. The DESIGN PROFESSIONAL shall advise DISTRICT of any adjustments to the latest opinion of probable Construction Costs caused by changes in general scope, extent or character or design requirements of the Project and furnish to DISTRICT a revised opinion of probable Construction Costs based on the drawings and specifications, at the 95% CD submittal. The estimate shall be in CSI format. Refer to Section 7 for further information on Construction Costs.
- 2.4.5 Number. The DESIGN PROFESSIONAL shall furnish five (5) copies (2 full size and 3 reduced size) and electronic files in pdf of the above Construction Documents and of the drawings and specifications and review them in person with the DISTRICT at 50%, 95% and 100% completion status. The DESIGN PROFESSIONAL shall respond in writing, to any comments given by the

DISTRICT in writing to the DESIGN PROFESSIONAL. On the basis of the accepted 95% Construction Documents, the DESIGN PROFESSIONAL shall prepare three (3) sets of signed and sealed Construction Documents, or electronically signed and sealed documents if acceptable to the authority having jurisdiction for permitting purposes. The DESIGN PROFESSIONAL shall provide corrections and/or changes required by the permitting agency at no additional cost to the DISTRICT (100% Construction Drawings).

- 2.4.6 Format. The DESIGN PROFESSIONAL shall provide reproducible and a digital copy of the approved construction plans (CAD and pdf files) and a master set of technical specifications (both hard copy and in pdf format) for the DISTRICT's use to issue bidding documents. DESIGN PROFESSIONAL shall deliver interim copies in electronic format if requested by the DISTRICT.
- 2.4.7 Asbestos. DESIGN PROFESSIONAL shall not specify any materials which contain asbestos. DESIGN PROFESSIONAL shall provide certification that no asbestos containing materials were specified or approved for installation to the extent that DESIGN PROFESSIONAL should have reasonably known.
- 2.4.8 Delegation. DESIGN PROFESSIONAL shall not delegate any design services to the construction Contractor unless specific approval is given by the DISTRICT in advance, in writing. When design/build services are approved by DISTRICT, DESIGN PROFESSIONAL shall clearly state in the Construction Documents what performance and design criteria must be satisfied by the Contractor.
- 2.4.9 Competition. Construction Documents shall be prepared that enhance competitive bids. Unless authorized in writing by DISTRICT, specifications for equipment shall be written in the descriptive style and be non-restrictive in product manufacturer selection. A minimum of two manufacturers or vendors shall be included for each product specified and the Contractor shall be allowed to propose substitutions unless an exception is approved by the DISTRICT.
- 2.4.10 Construction Schedule. Prior to the initiation of the bidding or negotiation phase with potential Contractors or applicable trades, DESIGN PROFESSIONAL shall develop a Project Schedule setting forth the reasonably anticipated timing of completion of major Project milestones. The construction schedule shall set forth a description of the progress of the work that is adequate to inform potential Contractors and all trades of DISTRICT's expectations for timely completion of the Project.
- 2.4.11 Preparation of Bid Packages. DESIGN PROFESSIONAL shall organize the Construction Documents by customary divisions or to otherwise efficiently identify the work of respective trade to facilitate bids from each trade and class of suppliers required for the Project.

2.5 BIDDING OR NEGOTIATING PHASE.

If required as part of the Scope of Work, and after written authorization to proceed:

- 2.5.1 Pre-Bid Meeting. The DESIGN PROFESSIONAL shall attend the pre-bid meeting in order to answer questions with regard to design documents or specifications that the DESIGN PROFESSIONAL has developed. If official written clarifications are necessary, the DISTRICT will issue an addendum to the bidding documents, and the DESIGN PROFESSIONAL will assist the DISTRICT by recommending language for any addenda that clarifies the DESIGN PROFESSIONAL's design.
- 2.5.2 Substitutions. The DESIGN PROFESSIONAL shall consult with the DISTRICT and advise on the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the bidding documents. However, it is the DISTRICT's decision on whether or not a substitution will be allowed.
- 2.5.3 As-Bid Set. Within 20 days after bid opening, the DESIGN PROFESSIONAL shall provide to DISTRICT specification sections and drawings updated to reflect changes made by Addendum ("As-Bid Set").
- 2.5.4 CM. The DISTRICT may select a construction manager for this Project (the Construction Manager or CM), and the DESIGN PROFESSIONAL shall coordinate its services (Basic and Additional) hereunder with the Construction Manager. Nothing in the CM contract will confer direct responsibility on the Construction Manager for the DESIGN PROFESSIONAL's services, nor shall anything contained therein diminish DESIGN PROFESSIONAL's responsibility for its services as set forth hereunder.
 - 2.5.4.1 Guaranteed Maximum Price (GMP). At the completion of each phase of design, DISTRICT will furnish DESIGN PROFESSIONAL with either a cost estimate or a guaranteed maximum price proposal (GMP) prepared by the Construction Manager based upon the design prepared by the DESIGN PROFESSIONAL. If the cost estimate is over the stated budget for the Project or if DISTRICT does not accept the Construction Manager's GMP proposal, the DESIGN PROFESSIONAL shall participate with the DISTRICT and Construction Manager in constructability reviews and shall revise the documents as necessary and as approved by the DISTRICT in order to construct the Project within the budget. The DESIGN PROFESSIONAL shall participate with the DISTRICT in reviewing the final GMP proposal documents, together with its supporting assumptions, clarifications, and contingencies.
 - 2.5.4.2 Revisions. After the GMP has been accepted by the DISTRICT, the DESIGN

PROFESSIONAL shall incorporate into the Construction Documents any revisions which are necessary due to inaccurate assumptions and clarifications made in the development of the GMP.

2.6 CONSTRUCTION ADMINISTRATION PHASE.

If required as part of the Scope of Work, and after written authorization to proceed:

2.6.1 General Administration of Construction Contract. DESIGN PROFESSIONAL shall consult with and advise DISTRICT during construction within the limits of the Construction Documents.

2.6.2 Visits to Site and Observation of Construction.

2.6.2.1 Meetings. DESIGN PROFESSIONAL shall attend the pre-construction conference to answer questions on the DESIGN PROFESSIONAL's design and specifications, assist the DISTRICT in conducting progress meetings, and record meeting minutes.

2.6.2.2 Site Visits. DESIGN PROFESSIONAL and its subconsultants, as necessary, shall make periodic and regular, but no less than once every other week, visits to the site, at intervals appropriate to the various stages of construction as DESIGN PROFESSIONAL deems necessary in order to observe, as an experienced and qualified design professional, the progress, quality and timely performance of the various aspects of Contractor's work relative to the plans and specifications prepared by the DESIGN PROFESSIONAL. Based on information obtained during such visits and on such observations, DESIGN PROFESSIONAL shall verify and determine if such work is proceeding in accordance with the Construction/Contract Documents and Contractor's schedule and DESIGN PROFESSIONAL shall keep DISTRICT informed of the progress of the work. Written reports of DESIGN PROFESSIONAL's visits shall be provided to DISTRICT.

2.6.2.3 Purpose of Site Visits. The purpose of DESIGN PROFESSIONAL's presence at the site will be to enable the DESIGN PROFESSIONAL to better carry out the duties and responsibilities assigned to and undertaken by DESIGN PROFESSIONAL during the Construction Administration Phase. In addition, as an experienced and qualified design professional, DESIGN PROFESSIONAL will provide for DISTRICT greater assurance that the completed work of the Contractor(s) will conform to the Construction/Contract Documents and that the design as reflected in the Construction/Contract Documents has been implemented and preserved by the Contractor(s).

2.6.3 Defective Work. On the basis of DESIGN PROFESSIONAL's observations,

DESIGN PROFESSIONAL shall recommend to DISTRICT to disapprove of or reject Contractor's work while it is in progress if DESIGN PROFESSIONAL believes that such work will not produce a completed Project that conforms to the Construction/Contract Documents, or that it will prejudice the design concept of the Project as reflected in the Construction/Contract Documents. The DESIGN PROFESSIONAL shall immediately notify the DISTRICT and the Contractor of any defective work by the Contractor, and the DISTRICT will determine what action is necessary.

- 2.6.4 Interpretations and Clarifications. DESIGN PROFESSIONAL shall issue necessary interpretations and clarifications of the Construction/Contract Documents and in connection therewith prepare field bulletins and field instructions for review and approval by the DISTRICT.
- 2.6.5 Shop Drawings. DESIGN PROFESSIONAL shall review and approve (or take other appropriate action) shop drawings (as that term is defined in the DISTRICT's Standard General Conditions), samples, schedules, and other data which Contractor(s) are required to submit for compliance with the Construction/Contract Documents in a timely manner which will not delay the Contractor(s) in completing its work and notify the DISTRICT of such reviews.
- 2.6.6 Substitutes. DESIGN PROFESSIONAL shall evaluate the acceptability of substitute materials and equipment proposed by Contractor(s) and review with and advise the DISTRICT on such acceptability prior to the DISTRICT making a determination.
- 2.6.7 Inspections and Tests. DESIGN PROFESSIONAL shall have authority to require special inspection or testing of the work after notifying the DISTRICT, and gaining the DISTRICT's approval for the method of contracting with the inspection/testing lab. DESIGN PROFESSIONAL shall receive and review all certificates of inspections, testing and approvals required by laws, rules, regulations, ordinances, codes, orders or the Construction/Contract Documents (to determine that their content complies with the requirements of, and the results certified indicate compliance with, the Construction/Contract Documents). DISTRICT will pay for testing labs. If the DESIGN PROFESSIONAL's testing indicates that the Contractor is not in compliance, the DISTRICT will determine the actions that will be taken against the Contractor with regard to the testing results.
- 2.6.8 Disputes and Changes during Construction. DESIGN PROFESSIONAL shall act as initial interpreter of the requirements of the Construction/Contract Documents and judge of the acceptability of the Contractor's work thereunder and notify the DISTRICT and the Contractor of any variances, deviations and non-conforming work. The DISTRICT will determine the course of action necessary after notification of non-conforming work. The DESIGN PROFESSIONAL will assist

the DISTRICT in holding meetings and negotiations with the Contractor to resolve disputes or changes to the Construction/Contract Documents. DESIGN PROFESSIONAL will review all change orders and Contractor's extra work proposals and advise DISTRICT of the acceptability of the proposed change and the costs of such change. The DISTRICT will review, approve and process change orders that the DISTRICT determines are necessary.

2.6.9 Contractor's Applications for Payment. Based on DESIGN PROFESSIONAL's on-site observations as an experienced and qualified design professional and based on review of applications for payment and the accompanying data and schedules:

2.6.9.1 Review. DESIGN PROFESSIONAL shall determine the amounts owing to Contractor(s) and recommend, in writing, payments to Contractor(s) in such amounts. DISTRICT will review payment applications and DESIGN PROFESSIONAL's recommendations and determine final approval of payment. Such recommendations of payment by the DESIGN PROFESSIONAL will constitute a representation to DISTRICT, based on DESIGN PROFESSIONAL's observations and review, that the work has progressed to the point indicated, and that, in accordance with the standard of care referenced herein, the work is in compliance with the Construction/Contract Documents. This recommendation will be subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction/Contract Documents and to any other qualifications stated in the recommendation. In the case of unit price work, DESIGN PROFESSIONAL's recommendations of payment will include final determinations of quantities and classifications of Contractor's work (subject to any subsequent adjustments allowed by the Construction/Contract Documents).

2.6.9.2 Recommendation. By recommending payment, DESIGN PROFESSIONAL represents to DISTRICT that to the best of the DESIGN PROFESSIONAL's knowledge the quality and quantity of Contractor's work, as it has been furnished and performed is in compliance with the Construction/Contract Documents.

2.6.10 Contractor(s) Completion Documents. DESIGN PROFESSIONAL shall receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals which are to be assembled by Contractor(s) in accordance with the Construction/Contract Documents. Such review by the DESIGN PROFESSIONAL is to determine that their content complies with the requirements of, and in the case of certificates of inspection, tests and approvals the results certified indicate compliance with the Construction/Contract Documents; and DESIGN PROFESSIONAL shall transmit them to DISTRICT with written comments.

- 2.6.11 Punch-list. When requested by the DISTRICT, DESIGN PROFESSIONAL shall review the Contractor's initial punchlist for Substantial Completion and shall prepare a comprehensive list of uncompleted or unacceptable items and deficiencies (punchlist) for review by the DISTRICT.
- 2.6.12 Substantial Completion. DESIGN PROFESSIONAL shall conduct with the DISTRICT an inspection and conduct and/or observe any tests necessary to determine if the work is substantially complete and notify the DISTRICT. A final inspection of the Project will be made with the DISTRICT to determine if the completed work is acceptable so that the DESIGN PROFESSIONAL may recommend, in writing, final payment to the Contractor(s) and may give written notice to the DISTRICT and the Contractor(s) that the work is acceptable and in compliance with the Construction/Contract Documents.
- 2.6.13 Changes Documented. The DESIGN PROFESSIONAL shall prepare and provide to DISTRICT AutoCAD dwg files as well as pdf files in electronic format as built drawings that incorporate all changes made during the construction process, based on the marked-up prints, drawings and other data furnished by Contractor(s) to DESIGN PROFESSIONAL and DESIGN PROFESSIONAL's own observations and which DESIGN PROFESSIONAL considers significant.

2.7 OPERATIONAL PHASE.

During the Operational Phase, DESIGN PROFESSIONAL shall, when requested by the DISTRICT:

- 2.7.1 Assistance. The DESIGN PROFESSIONAL shall provide assistance, consistent with contractual services, in conjunction with the start-up, refining, and adjusting of any equipment or system.
- 2.7.2 Advice. In company with the DISTRICT, the DESIGN PROFESSIONAL shall visit the Project to observe and point out any apparent defects in the completed construction, assist DISTRICT in consultations and discussions with Contractor(s) concerning correction of such deficiencies, and make recommendations as to replacement or correction of defective work, including assisting the DISTRICT during warranty of the Project(s).
- 2.7.3 Training. In conjunction with Contractor, the DESIGN PROFESSIONAL shall assist in training DISTRICT's staff to operate and maintain the Project.

SECTION 3 – MODIFICATIONS OF WORK/ADDITIONAL SERVICES

3.1 NOTICE OF CHANGE.

The DISTRICT reserves the right to make changes in the Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the DESIGN PROFESSIONAL of the DISTRICT's notification of a contemplated change, the DESIGN PROFESSIONAL shall promptly, in writing; (1) provide a detailed estimate for the increase or decrease in cost, if any, due to the contemplated change, (2) notify the DISTRICT of any estimated change in the completion date, and (3) advise the DISTRICT in writing if the contemplated change shall affect the DESIGN PROFESSIONAL's ability to meet the completion dates or schedules of this Contract.

If the DISTRICT so instructs in writing, the DESIGN PROFESSIONAL shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the DISTRICT's decision regarding the proposed change.

3.2 AMENDMENT.

If the DISTRICT elects to make the change, the DISTRICT shall issue a Design Professional Services Authorization or a Supplement to an existing DPSA; and the DESIGN PROFESSIONAL shall not commence work on any such change until such DPSA or Supplement has been signed by the DESIGN PROFESSIONAL and approved and executed by the DISTRICT.

SECTION 4 - DISTRICT'S RESPONSIBILITIES

DISTRICT shall do the following in a timely manner so as not to delay the services of the DESIGN PROFESSIONAL:

4.1 DISTRICT REPRESENTATIVE.

The DISTRICT's Representative with respect to the services to be rendered under this Contract is the Director, Construction Services Division. Such person shall have complete authority to transmit instructions, receive information, interpret and define DISTRICT's policies and decisions with respect to DESIGN PROFESSIONAL's services for the Project.

4.2 PROJECT REQUIREMENTS.

As requested, in writing by DESIGN PROFESSIONAL, the DISTRICT will provide all criteria and full information as to DISTRICT's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and DISTRICT will furnish copies of all design and construction standards which DISTRICT will require to be included in the drawings and specifications.

4.3 ACCESS.

The DISTRICT will arrange for access to and make provisions where necessary for DESIGN PROFESSIONAL to enter upon property or inspect DISTRICT records as required for DESIGN PROFESSIONAL to perform services under this Contract, subject to any applicable requirements regarding Confidential Information as described in Section 8.13 herein.

4.4 REVIEW.

The DISTRICT will examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by DESIGN PROFESSIONAL. If requested by DESIGN PROFESSIONAL, the DISTRICT will render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of DESIGN PROFESSIONAL. However, said decisions shall create no liability on the part of DISTRICT for Approval or Acceptance.

4.5 MULTIPLE PRIMES.

If more than one prime contract is to be awarded for construction, materials, equipment and services for the entire Project, the DISTRICT will designate a person or organization to have authority and responsibility for coordinating the activities among the various prime contractors.

4.6 COST DATA.

The DISTRICT will furnish to the DESIGN PROFESSIONAL data or estimated figures as to DISTRICT's anticipated costs for services to be provided by others for DISTRICT so that DESIGN PROFESSIONAL may make the necessary findings to support opinions of probable Construction Costs.

4.7 MEETINGS.

The DISTRICT will attend the pre-bid conference, preconstruction conference, construction progress and other job related meetings and substantial completion inspections and final payment inspections.

4.8 NOTICE.

The DISTRICT will give prompt written notice to DESIGN PROFESSIONAL whenever DISTRICT observes or otherwise becomes aware of any development that affects the scope or timing of DESIGN PROFESSIONAL's services, or any defect or non-conformance in the work of any Contractor.

SECTION 5 - PERIODS OF SERVICE

5.1 TERM.

The period of service and the Contract term shall commence upon the approval and execution of this Contract by both parties and continue until completion of all project phases, including the completion of all DPSAs issued pursuant to this Contract, or until the earlier termination of this Contract as provided for herein.

5.2 TIME EXTENSIONS.

If the DISTRICT has requested significant modifications or changes in the general scope, extent or character of the Project, the time of performance of DESIGN PROFESSIONAL's services shall be adjusted equitably.

5.3 DISTRICT DELAYS.

If DESIGN PROFESSIONAL's services for design or during construction of the Project are delayed or suspended in whole or in part by DISTRICT for more than nine (9) months for reasons beyond DESIGN PROFESSIONAL's control, DESIGN PROFESSIONAL may be entitled to an adjustment in compensation to the extent of any documented and verified costs actually, reasonably and necessarily incurred by DESIGN PROFESSIONAL due to any such delay; but in no event shall DISTRICT be liable for any lost profits, lost opportunity damage or consequential damages.

5.4 SEQUENCING.

In the event that the work designed or specified by DESIGN PROFESSIONAL is to be furnished or performed under more than one prime contract, or if DESIGN PROFESSIONAL's services are to be separately sequenced with the work of one or more prime contractors (such as in the case of fast-tracking), DISTRICT and DESIGN PROFESSIONAL shall, prior to commencement of the Construction Document Phase, develop a schedule for performance of DESIGN PROFESSIONAL's services during the Construction Document, Bidding or Negotiating and Construction Administration Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate contracts. This schedule is to be prepared whether or not the work under such contracts is to proceed concurrently and is to be included in the Scope of Work.

5.5 MONITORING PROJECT SCHEDULE.

The DESIGN PROFESSIONAL is to provide and regularly update a detailed project schedule (the Project Schedule) with its Scope of Work and once accepted by the DISTRICT, it will be the responsibility of the DESIGN PROFESSIONAL to ensure at all times that sufficient time remains in the Project Schedule within which to complete the services required hereunder. In the event there have been delays which would affect the completion date of deliverables under the Project Schedule, the DESIGN PROFESSIONAL will submit a written request to the DISTRICT which identifies the reason(s) for the delay, the amount of time related to each reason and specific

indication as to whether or not the delays were concurrent with one another. The DISTRICT will review the request and make a determination as to granting all or part of the requested extension.

SECTION 6 – METHOD OF COMPENSATION AND PAYMENTS TO DESIGN PROFESSIONAL

6.1 METHODS OF COMPENSATION

DESIGN PROFESSIONAL will be compensated for services performed under this Contract on either: 1) a fixed price/lump sum basis, or 2) a time charge/not-to-exceed basis; as identified in **Exhibit A** hereto or any applicable DPSA. The fixed price/lump sum method of compensation is described in Section 6.3 herein, and the time charge/not to exceed method of compensation is described in Section 6.4 herein.

6.2 FEE.

The DISTRICT agrees to pay the DESIGN PROFESSIONAL compensation for duly authorized services performed as set forth in **Exhibit A** or in an applicable DPSA. **Exhibit A** or an applicable DPSA shall establish both the amount of compensation and the method of compensation for services performed under this Contract (i.e. whether the fee is lump sum/fixed price or whether the fee is time charge/not to exceed). If the time charge/not to exceed method of compensation is used, **Exhibit A** or any applicable DPSA shall specifically state whether the reimbursement of expenses is authorized and set a separate not to exceed amount for authorized expenses, if any.

6.3 FIXED PRICE/LUMP SUM PAYMENT METHOD.

When the DESIGN PROFESSIONAL's services are to be compensated for on a fixed price/lump sum method of compensation, as identified on **Exhibit A** or on a DPSA, then the DISTRICT and DESIGN PROFESSIONAL shall mutually agree to a fixed price/lump sum fee for all services required to complete the Project along with a detailed Scope of Work. Prior to execution of the fixed price/lump sum Contract or DPSA, the DESIGN PROFESSIONAL shall have submitted to the DISTRICT's Representative a detailed cost proposal including the estimated labor hours, labor rates, subcontractual services, out of pocket expenses and other related costs supporting the proposed Scope of Work. The fixed price/lump sum fee shall include all services required to complete the Scope of Work including labor, expenses, overhead and profit as part of the fixed price/lump sum. DESIGN PROFESSIONAL agrees that the fee is not tied to construction cost.

6.4 TIME CHARGE/ "NOT TO EXCEED" METHOD.

When the time charge/not to exceed basis is identified in **Exhibit A** or a DPSA as the method of compensation, the DESIGN PROFESSIONAL will submit a not to exceed budget to the DISTRICT's Representative for prior approval based on estimated labor hours and labor rates

plus subcontractual services, out of pocket expenses and other related costs supporting the proposed Scope of Work. The DISTRICT shall not be obligated to reimburse the DESIGN PROFESSIONAL for costs incurred in excess of the total not to exceed cost amount. The DESIGN PROFESSIONAL shall notify the DISTRICT's Representative in writing when 90% of the not to exceed amount has been reached. DESIGN PROFESSIONAL agrees that the fee is not tied to construction cost.

6.5 SUBCONTRACTS.

Sub-contractual services shall be included at the actual fees proposed by the subconsultant and accepted by the DISTRICT. Subcontractual services and fees shall be approved by the DISTRICT in writing prior to performance of the sub-contractual work.

6.6 LABOR RATES.

Labor rates of DESIGN PROFESSIONAL and any subconsultants shall not exceed the actual hourly raw labor rates for services rendered by personnel directly engaged on DISTRICT projects, multiplied by an overall overhead and profit factor. The labor rates and overhead and profit factors are to be provided upon request and are subject to audit.

6.7 EXPENSES.

6.7.1 If out-of-pocket expenses are authorized in **Exhibit A** or a DPSA:

6.7.1.1 All reimbursable expenses will be estimated up front at the time of negotiating **Exhibit A** or at the time of each Design Professional Service Authorization or Supplement to a DPSA;

6.7.1.2 **Exhibit A**, a DPSA, or Supplement to a DPSA must include a separate not to exceed amount for expenses;

6.7.1.3 Expenses will only be reimbursed up to the separately stated not-to-exceed amount. All expenses exceeding the not- to-exceed amount are the responsibility of the DESIGN PROFESSIONAL.

6.7.2 Out-of-pocket expenses means the actual expenses expected to be incurred by the DESIGN PROFESSIONAL or DESIGN PROFESSIONAL's subconsultants directly or indirectly in connection with the work subject to the following:

6.7.2.1 Reimbursement for travel expenses such as per diem, mileage, meals or lodging expenses shall be in accordance with F.S. 112.061;

6.7.2.2 Reimbursement will not be provided for items or expenses normally connected with the course of doing business such as office supplies, advertisements for hiring personnel, lease or purchase of office furniture or office space, local

telephone service, taxes, entertainment expenses (including business lunches), computer time on the DESIGN PROFESSIONAL's own equipment, and normal reproduction (copying) charges.

6.7.2.3 Special charges such as printing, duplicating, soil borings, aerial photography, etc. may be reimbursed if **Exhibit A** or a DPSA identifies the quantity and unit cost maximum for each type of special charge required by the Contract and identifies the expense as subject to reimbursement;

6.7.2.4 Charges for specialized equipment shall be determined on an individual basis subject to advance approval of the DISTRICT;

6.7.2.5 The DISTRICT reserves the right to determine if an expense is reasonable and may reject expenses which are excessive or represent costs of a personal nature. The DISTRICT will not reimburse the cost of tips, personal items, sundries, travel insurance, in-room movies, laundry or valet services, cable TV hookups or charges, first class airfare (unless no other service is available), alcoholic beverages, entertainment expenses, and meals or snacks (except meal allowance as authorized by F.S. 112.061)

6.7.3 All requests for payment of out-of-pocket expenses eligible for reimbursement under the terms of this Contract shall include copies of paid receipts, invoices, or other documentation acceptable to the DISTRICT Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in the Contract and as applicable in each DPSA.

6.8 SCHEDULE OF VALUES.

For either method of compensation, DESIGN PROFESSIONAL and DISTRICT shall agree on a Schedule of Values incorporating Scope of Work references, deliverables, and milestones. A pay application with percent complete of each activity shall be included with each billing. A schedule update of DESIGN PROFESSIONAL's work shall be included with each billing.

6.9 PROGRESS PAYMENTS.

For either method of compensation, the DESIGN PROFESSIONAL will bill the DISTRICT at the amounts set forth for services rendered toward the completion of the Scope of Work. Payments will generally be made either after completion of scheduled milestones or after acceptance of specified deliverables. Where incremental billings for partially completed items are permitted, the total incremental billings shall not exceed the percentage of estimated completion of identifiable deliverables or accepted deliverables as of the billing date.

6.10 APPROVAL PROCESS.

Pay applications received from the DESIGN PROFESSIONAL pursuant to this Contract will be reviewed and approved by the DISTRICT's Representative or his/her designee, indicating that services have been received, and then will be sent to the Finance Department for payment. Invoices must reference the Contract and project number, and if applicable, the DPSA. DISTRICT shall provide DESIGN PROFESSIONAL with a written notice of disputed invoice within 10 days after receipt of such invoice which clearly states any and all deficiencies in DESIGN PROFESSIONAL's invoice that will prevent prompt processing and issuance of payment. To the extent there is an undisputed portion of the invoice that can be paid, the DISTRICT shall proceed with prompt payment of that portion of the invoice. Invoices will be paid in accordance with the Local Government Prompt Payment Act.

6.11 FINAL PAYMENT.

In order for both parties to close their books and records, the DESIGN PROFESSIONAL will clearly state Final on the DESIGN PROFESSIONAL's final/last billing to the DISTRICT. This shall constitute DESIGN PROFESSIONAL's certification that all services have been properly performed and all charges and costs have been invoiced to DISTRICT. Since this account will thereupon be closed, any and other further charges, if not properly included on this final invoice, are waived by the DESIGN PROFESSIONAL.

6.12 RIGHT OF OFFSET.

Except for issues arising from contract indemnification provisions, the DISTRICT will have the right to retain out of any payment due the DESIGN PROFESSIONAL under this Contract an amount sufficient to satisfy any amount due and owing to the DISTRICT by the DESIGN PROFESSIONAL under this Contract. The DISTRICT may withhold payment on any invoice in the event that the DESIGN PROFESSIONAL is in default under any provision of this Contract as of the time of processing the invoice or as of the time payment is made available on the invoice. This right to withhold will continue until such time as the default has been cured, and, upon cure, the DISTRICT will have the right to retain an amount equal to the damages suffered as a result of the default.

SECTION 7 - CONSTRUCTION COST AND OPINIONS OF COST

7.1 CONSTRUCTION COST.

7.1.1 Definition. The "Construction Cost" of the Project means the total cost to DISTRICT of those portions of the entire Project designed and specified by DESIGN PROFESSIONAL.

7.1.2 Fixed Construction Budget Cap. Upon completion of the Design Development Phase for architectural projects, the DISTRICT's Representative will determine a

fixed construction budget cap for this Project (Fixed Construction Budget Cap). The DESIGN PROFESSIONAL agrees to maintain this amount or it shall redesign at no cost to the DISTRICT until the Project can be achieved within this limit. The program shall not be lessened by design requirements to decrease costs without the express written approval of the DISTRICT's Representative. Similarly, "add alternates" for program requirements are not allowable in order for the DESIGN PROFESSIONAL to lessen costs to meet the Fixed Construction Budget Cap.

SECTION 8 - GENERAL CONSIDERATIONS

8.1 STANDARD OF CARE.

The DESIGN PROFESSIONAL has, during the selection and negotiation process which has preceded this Contract, represented to DISTRICT that the DESIGN PROFESSIONAL is possessed of that level of skill, knowledge, experience and expertise that is commensurate with design firms of national repute in the areas of practice required for this Project. DESIGN PROFESSIONAL acknowledges that DISTRICT has relied on DESIGN PROFESSIONAL's representations of skill, knowledge, experience and expertise. By executing this Contract, DESIGN PROFESSIONAL agrees that DESIGN PROFESSIONAL will exercise that degree of care, knowledge, skill, and ability as other design professionals possessing the degree of skill, knowledge, experience and expertise which DESIGN PROFESSIONAL has claimed. DESIGN PROFESSIONAL shall perform such duties as may be assigned without neglect. DESIGN PROFESSIONAL accepts the relationship of trust and confidence established by this Contract, and covenants with DISTRICT to cooperate with DISTRICT and to utilize DESIGN PROFESSIONAL's skill, efforts and judgment commensurate with design firms of national repute in the areas of practice required for this Contract. DESIGN PROFESSIONAL agrees to perform each assignment in an efficient and economical manner consistent with the DISTRICT's interests and consistent with the DISTRICT's stated objectives and recognized professional design standards.

DESIGN PROFESSIONAL further contracts with DISTRICT to furnish its professional skill and judgment with due care in accordance with applicable Federal, State and local laws, codes and regulations as amended and supplemented which are in effect on the date of this Contract first written. It is specifically understood that the Florida Accessibility Code for Building Construction latest edition as enacted by the Florida Building Code shall be complied with and incorporated into the Project. Additionally, Title II requirements of the 2010 ADA Standards for Accessible Design (published by DOJ, September 15, 2010) shall be complied with and incorporated into the Project.

Although specific provisions of this Contract refer to some services with terms such as complete, accurate, full extent, highest, in detail, verify, certify, represent, substantiate, inspect, monitor, discover, as often as necessary, approve, accept, reject, and enforce, such terms and similar terms shall be qualified by the standard of care stated in the preceding two paragraphs. In addition, the DESIGN PROFESSIONAL acknowledges that it has been reviewed and understands the provisions of the DISTRICT's procedures entitled "Evaluating Recovering and Recording

Errors/Omissions by a Design Professionals.”

The DESIGN PROFESSIONAL shall not be responsible for the means, methods, techniques, sequences and operations of construction or safety precautions and programs except as provided in this Contract.

Acceptance of the work by the DISTRICT or Contract termination does not constitute DISTRICT approval or waiver of any other remedies available by law and will not relieve the DESIGN PROFESSIONAL of the responsibility for subsequent corrections of any errors and/or omissions and the clarification of any ambiguities. The DESIGN PROFESSIONAL shall make all necessary revisions or corrections resulting from errors and/or omissions on the part of the DESIGN PROFESSIONAL without additional compensation.

8.2 TERMINATION.

This Contract may be terminated by the DESIGN PROFESSIONAL upon sixty (60) days prior written notice to the DISTRICT in the event of substantial failure by the DISTRICT to perform in accordance with the terms of this Contract through no fault of the DESIGN PROFESSIONAL. It may also be terminated, in whole or in part, by the DISTRICT, with cause upon five (5) business days written notice to the DESIGN PROFESSIONAL or without cause upon ten (10) business days written notice to the DESIGN PROFESSIONAL. Unless the DESIGN PROFESSIONAL is in breach of this Contract, the DESIGN PROFESSIONAL shall be paid for services rendered to the DISTRICT's satisfaction through the date of termination. In no event, whether termination is with or without cause, shall the DISTRICT be liable for any lost profits, lost opportunity damage, or consequential damages. After receipt of a termination notice and except as otherwise directed by the DISTRICT, the DESIGN PROFESSIONAL shall:

- a. Stop work on the date and to the extent specified.
- b. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- c. Transfer all work in process, completed work, and other materials related to the terminated work to the DISTRICT.
- d. Continue and complete all parts of the work that have not been terminated.

Should a termination for breach later be declared wrongful, said termination shall be considered and treated as a termination without cause.

Notwithstanding any breach of this Contract by either party nor the status of payment to the DESIGN PROFESSIONAL, nor the DISTRICT's exercise of its rights of termination, it is hereby agreed between the parties that copies of any and all property, work product, documentation, reports, computer systems and software, schedules, graphs, outlines, books,

manuals, logs, files, deliverables, photographs, videos, tape recordings or data relating to this Project which have been created as a part of DESIGN PROFESSIONAL's services or authorized by the DISTRICT as a reimbursable expense, whether generated directly by the DESIGN PROFESSIONAL, or by or in conjunction or consultation with any other party whether or not a party to this Contract, whether or not in privity of contract with the DISTRICT or DESIGN PROFESSIONAL, and wherever located shall be the property of the DISTRICT.

8.3 TRUTH-IN-NEGOTIATIONS CERTIFICATE.

Signature of this Contract by the DESIGN PROFESSIONAL shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the DESIGN PROFESSIONAL's most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the DISTRICT determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The DISTRICT shall exercise its rights under this Certificate within one (1) year following final payment. DISTRICT has the authority and right to audit DESIGN PROFESSIONAL's records under this provision.

8.4 PERSONNEL

8.4.1 Representations. The DESIGN PROFESSIONAL represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship or conflicting relationship with the DISTRICT.

All of the services required herein shall be performed by the DESIGN PROFESSIONAL or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the DESIGN PROFESSIONAL's key personnel or sub design professional as listed in DESIGN PROFESSIONAL's proposal and/or presentation to the DISTRICT's selection committee must be made known to the DISTRICT's Representative and written approval must be granted by the DISTRICT before said change or substitution can become effective.

The DESIGN PROFESSIONAL represents and warrants that all services shall be performed by skilled and competent personnel to the professional standard of care set forth in Section 8.1 above.

All of the DESIGN PROFESSIONAL's personnel (and all sub design professionals) will comply with all DISTRICT requirements covering conduct, safety, and security while on DISTRICT premises.

- 8.4.2 DESIGN PROFESSIONAL's Representative. Concurrent with its fee proposal, the DESIGN PROFESSIONAL shall advise the DISTRICT of the name of its proposed project manager (the Project Manager). The Project Manager shall devote such time as may be necessary to the Project and as may be appropriate to and consistent with full and timely performance of this Contract. This individual shall be assigned to the Project through final acceptance of construction. The Project Manager shall not be removed from his/her responsibilities on this Project without the written consent of the DISTRICT. The DISTRICT shall retain reasonable right of approval of the DESIGN PROFESSIONAL's designated Project Manager and the right to require the DESIGN PROFESSIONAL to replace its designated Project Manager with another individual acceptable to the DISTRICT.

8.5 NON-DISCRIMINATION.

The DISTRICT and its affiliated entities is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. The DESIGN PROFESSIONAL warrants and represents that throughout the term of the Contract, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Contract.

As a condition of entering into this Contract, the DESIGN PROFESSIONAL represents and warrants that it will comply with the DISTRICT'S Non-Discrimination Policy . As part of such compliance, the DESIGN PROFESSIONAL shall not discriminate on the basis of race, color, ethnicity or national origin, religion, creed, language, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the DESIGN PROFESSIONAL retaliate against any person for reporting instances of such discrimination. The DESIGN PROFESSIONAL understands and agrees that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification or debarment of the company from participating in DISTRICT contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. DESIGN PROFESSIONAL shall include this language in its subcontracts.

8.6 INDEPENDENT CONTRACTOR RELATIONSHIP.

The DESIGN PROFESSIONAL is, and shall be, in the performance of all work, services and activities under this Contract, an Independent Contractor, and not an employee, agent,

representative or servant of the DISTRICT. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the DESIGN PROFESSIONAL's sole direction, supervision, and control. The DESIGN PROFESSIONAL shall exercise control over the means and manner in which it and its employees, sub-consultants and suppliers perform the work, and in all respects the DESIGN PROFESSIONAL's relationship and the relationship of its employees to the DISTRICT shall be that of an Independent Contractor and not as employees or agents of the DISTRICT. ACCORDINGLY, NO RIGHTS OR INTERESTS GRANTED HEREIN BY DISTRICT SHALL BE DEEMED TO CONFER ANY RIGHTS OF SOVEREIGN IMMUNITY TO DESIGN PROFESSIONAL, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, INDEPENDENT CONTRACTORS, SUBCONTRACTORS AND REPRESENTATIVES, AND AS SUCH, ALL RIGHTS AND INTERESTS OF SOVEREIGN IMMUNITY SHALL BE STRICTLY LIMITED TO DISTRICT UNDER THE LAWS AND CONSTITUTION OF THE STATE OF FLORIDA.

DESIGN PROFESSIONAL shall not for itself, and it shall ensure that its officers, directors, employees, agents, independent contractors, subcontractors and representatives do not assert as a defense or claim any rights of sovereign immunity in any legal or other proceeding. DESIGN PROFESSIONAL agrees to indemnify, defend, and hold DISTRICT harmless from and against any and all liabilities, damages, claims, losses, including attorney's fees and costs at all levels of trial and appeal, resulting from a breach of this paragraph by DESIGN PROFESSIONAL and any of its officers, directors, employees, agents, independent contractors, subcontractors and representatives.

The DESIGN PROFESSIONAL does not have the power or authority to bind the DISTRICT in any promise, agreement or representation.

The DESIGN PROFESSIONAL represents that all subconsultant agreements entered into shall incorporate by reference the terms and conditions of this Contract, and further warrants that the DISTRICT is an intended express third party beneficiary of any such subcontract.

8.7 CONTINGENT FEES.

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

8.8 AUTHORITY TO PRACTICE.

The DESIGN PROFESSIONAL hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals

shall be submitted to the DISTRICT's Representative upon request.

All final plans, documents, reports, studies and other data prepared by the DESIGN PROFESSIONAL shall bear the professional's seal/signature, in accordance with the applicable Florida Statutes.

8.9 TAXES.

The DISTRICT is exempt from payment of Florida State Sales and Use Taxes. The DISTRICT will sign an exemption certificate submitted by the DESIGN PROFESSIONAL. The DESIGN PROFESSIONAL shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the DISTRICT. The DESIGN PROFESSIONAL is not authorized to use the DISTRICT's Tax Exemption Number in securing such materials.

The DESIGN PROFESSIONAL shall be responsible for payment of its own and its share of its employee's payroll, payroll taxes, and benefits with respect to this Contract.

8.10 AVAILABILITY OF FUNDS.

The DISTRICT's performance and obligation to pay under this Contract is contingent upon an annual appropriation for its purpose by the Board.

Notwithstanding anything in this Contract to the contrary, in the event that no funds are appropriated or budgeted by the Health Care District of Palm Beach County's or DISTRICT's governing board in any fiscal year DESIGN PROFESSIONAL to pay the costs associated with DISTRICT's obligations under this Contract, or in the event the funds budgeted or appropriated are, or are estimated by DISTRICT to be, insufficient to pay the costs associated with DISTRICT's obligations hereunder in any fiscal period, then DISTRICT will notify of such occurrence and either DISTRICT or DESIGN PROFESSIONAL may terminate this Contract by notifying the other in writing, which notice shall specify a date of termination no earlier than twenty-four (24) hours after giving of such notice. Termination in accordance with the preceding sentence shall be without penalty or expense to DISTRICT of any kind.

8.11 INSURANCE.

- 8.11.1 Requirements. DESIGN PROFESSIONAL shall maintain, at its sole expense, in full force and effect at all times during the term of this Contract, insurance coverage and limits (including endorsements) as described herein. Failure to maintain at least the required insurance shall be considered default of the Contract. The requirements contained herein, as well as DISTRICT's review or acceptance of insurance maintained by DESIGN PROFESSIONAL, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by DESIGN PROFESSIONAL under this Contract. DESIGN PROFESSIONAL

agrees to notify the DISTRICT at least ten (10) days prior to cancellation, non-renewal or material change to the required insurance coverage. Where the policy allows, coverage shall apply on a primary and non-contributory basis.

- 8.11.2 Commercial General Liability. DESIGN PROFESSIONAL shall maintain Commercial General Liability at a limit of liability not less than \$1,000,000 per occurrence, \$2,000,000 aggregate to protect DESIGN PROFESSIONAL from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Agreement, whether such operations be by DESIGN PROFESSIONAL or by anyone directly employed by or contracting with DESIGN PROFESSIONAL. The policy shall include a standard form of cross liability clause and cover all liability arising out of completed operations; personal injury; Broad Form Property Damage including all explosion, collapse and underground hazards; independent professionals; and contractual liability, including but not limited to, liability assumed by the DESIGN PROFESSIONAL under this Contract. Coverage shall not contain any endorsements excluding Contractual Liability or Cross Liability.

Additional Insured Endorsement: The Commercial General Liability policy shall be endorsed to include, "Health Care District of Palm Beach County, an independent special district, its Board, Officers, Employees and Agents" as an Additional Insured. A copy of the endorsement shall be provided to DISTRICT upon request.

- 8.11.3 Workers' Compensation Insurance & Employer's Liability. DESIGN PROFESSIONAL shall maintain Workers' Compensation & Employer's Liability in accordance with Chapter 440, Florida Statutes.

- 8.11.4 Professional Liability. DESIGN PROFESSIONAL shall maintain Professional Liability, or equivalent Errors & Omissions Liability, at a limit of liability not less than \$1,000,000 each occurrence and \$2,000,000 per aggregate. When a self-insured retention (SIR) or deductible exceeds \$10,000, DISTRICT reserves the right, but not the obligation, to review and request a copy of DESIGN PROFESSIONAL's most recent annual report or audited financial statement. For policies written on a "claims-made" basis, DESIGN PROFESSIONAL warrants the Retroactive Date equals or precedes the effective date of this Contract. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the term of this Contract, DESIGN PROFESSIONAL shall purchase a SERP with a minimum reporting period not less than three (3) years after the expiration of the contract term. **The requirement to purchase a SERP shall not relieve the DESIGN PROFESSIONAL of the obligation to provide replacement coverage.** The Certificate of Insurance providing evidence of the purchase of this coverage shall

clearly indicate whether coverage is provided on an “occurrence” or “claims-made” form. If coverage is provided on a “claims-made” form the Certificate of Insurance must also clearly indicate the “retroactive date” of coverage.

- 8.11.5 Waiver of Subrogation. Except where prohibited by law, DESIGN PROFESSIONAL hereby waives any and all rights of Subrogation against the DISTRICT, its officers, employees and agents for each required policy, except Professional Liability. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then DESIGN PROFESSIONAL shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy that includes a condition to the policy specifically prohibiting such an endorsement, or voids coverage should DESIGN PROFESSIONAL enter into such an agreement on a pre-loss basis.
- 8.11.6 Comprehensive Automobile Liability. DESIGN PROFESSIONAL shall provide for all of DESIGN PROFESSIONAL's owned, non-owned and hired vehicles, protecting the DESIGN PROFESSIONAL against damages arising from bodily injury (including death) and from claims for property damage arising out of the use or the operations of the DESIGN PROFESSIONAL, its sub-contractors or agents under this Contract. This insurance shall be for an amount acceptable to the DISTRICT and shall in any event not be less than \$1,000,000.00 inclusive of any one accident.
- 8.11.7 Policy Requirements. The insurance policies must provide coverage for the PROGRAM MANAGER's services in connection with this Project, which is a healthcare facility. The insurance policies must not exclude hospitals, nursing homes, rehabilitation centers, or other healthcare facilities (regardless of size and height).
- 8.11.8 Certificate(s) of Insurance. On execution of this Contract, renewal of the Contract, within forty-eight (48) hours of a request by DISTRICT, or upon expiration of any of the required coverages throughout the term of the Contract, DESIGN PROFESSIONAL shall deliver to the DISTRICT or to DISTRICT's designated representative a signed a Certificate(s) of Insurance evidencing that all types and minimum limits of insurance coverage required by this Contract have been obtained and are in force and effect.

Certificates for the DISTRICT shall be addressed to:

Health Care District of Palm Beach County
c/o Compliance, Privacy and Risk
Project Name & Project Number

1515 N. Flagler Dr
West Palm Beach, FL 33401

- 8.11.9 Right to Revise or Reject. DISTRICT, by and through its Legal Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify reject or accept any required policies of insurance, including limits, coverage, or endorsements, herein from time to time throughout the term of this Contract.

8.12 OWNERSHIP OF DOCUMENTS.

The DESIGN PROFESSIONAL shall deliver to the DISTRICT's Representative, for acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the DISTRICT under this Contract.

All information and data obtained, developed, or supplied by the DISTRICT or at its expense will be kept confidential by the DESIGN PROFESSIONAL and will not be disclosed to any other party, directly or indirectly, without the DISTRICT's prior written consent unless required by a lawful order.

All drawings, maps, sketches, programs, data base, reports and other data developed, utilized, or purchased under this Contract for a DISTRICT project or at the DISTRICT's expense shall be and remain the DISTRICT's property and may be reproduced and reused at the discretion of the DISTRICT. However, DESIGN PROFESSIONAL will incur and assume no liabilities for reuse unless DESIGN PROFESSIONAL agrees with said reuse and is compensated for any revisions necessary to update plans for Code compliance, site adaptations, or DISTRICT requested changes.

If DISTRICT requests in writing, the DESIGN PROFESSIONAL shall return to DISTRICT any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representation made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

8.12A PHOTOGRAPHY OF FINAL PROJECT

If DESIGN PROFESSIONAL photographs or videos the completed Project, DESIGN PROFESSIONAL agrees to provide the DISTRICT with a copy of such photos or video in a digital file uploaded to the DISTRICT's File Transfer Protocol (FTP) site or provided on a flash drive delivered to the DISTRICT's Representative.

8.13 CONFIDENTIALITY OF INFORMATION AND COMPLIANCE WITH THE PUBLIC RECORDS LAW.

8.13.1 Public Records Requests. Under Chapter 119, Florida Statutes (the Florida Public Records Law), a request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency.

8.13.2 Records Exempt from the Public Records Laws. The Florida Public Records Law provides for certain exemptions to Florida's Public Records Law to protect the security of specific governmental facilities, employees and visitors. For the same security reasons, the DISTRICT has the statutory obligation to protect such records from public disclosure and only disclose confidential and/or exempt information to a licensed engineer, architect or contractor. The purpose of this Section is to facilitate the DESIGN PROFESSIONAL's work by making specific documents available to individuals/firms while implementing controls on the distribution of records or information which is confidential and/or exempt from the Florida Public Records Law.

8.13.3 Confidential Information. For purposes of this Section, "Confidential Information" shall include all information or material that is confidential and/or exempt according to the Florida Public Records Law. The exemptions most relevant to the DESIGN PROFESSIONAL include, but are not limited to:

- Plans, blueprints, drawings and diagrams which depict the internal layout and structural elements of a building or other structure, including 911, E911 or Public Safety Radio communication system infrastructure, owned or operated by the DISTRICT;
- Security or fire safety system plans records, information, photographs, audio and visual representations, schematic diagrams, surveys, recommendations or consultations relating directly to the physical security or fire safety of the facility or revealing security or fire safety systems;
- Threat assessments;
- Emergency evacuation plans;
- Sheltering arrangements; and/or
- Manuals for security or fire safety personnel, emergency equipment or security or fire safety training.

The DESIGN PROFESSIONAL has an obligation to maintain the confidential status of Confidential Information. The DESIGN PROFESSIONAL shall hold and maintain the Confidential Information in the strictest confidence for the sole and exclusive benefit of the DISTRICT. The DESIGN PROFESSIONAL shall restrict access to Confidential Information to: 1) the DESIGN PROFESSIONAL's employees, and/or 2) licensed architects, engineers, contractors, subcontractors (Third Parties) for the sole purpose of providing services related to this Contract. Prior to releasing any Confidential Information to a Third Party, the DESIGN PROFESSIONAL shall require those Third Parties to execute nondisclosure restrictions at least as protective as those in this Contract, and maintain a list of any Third Party to which the DESIGN PROFESSIONAL has distributed Confidential Information. Other than as authorized above, the

DESIGN PROFESSIONAL shall not, without prior written approval of DISTRICT, publish, copy, or otherwise disclose to others any Confidential Information.

8.13.4 Disclosure Warning. If Confidential Information is in written form, the DESIGN PROFESSIONAL shall label or stamp the materials as they are created with the Disclosure Warning described below on each and every sheet of plans, documents or reports that contains exempt information. If the DESIGN PROFESSIONAL is distributing Confidential Information to authorized recipients, the materials and the correspondence related thereto should contain the following disclosure warning:

DISCLOSURE WARNING. THIS DOCUMENT IS EXEMPT AND/OR CONFIDENTIAL UNDER SEC. 119.071, FLORIDA STATUTES. ANY ENTITY OR PERSONS RECEIVING SUCH INFORMATION SHALL MAINTAIN THE EXEMPT AND CONFIDENTIAL STATUS OF THE INFORMATION UNLESS OTHERWISE AUTHORIZED BY THE DISTRICT. THESE DOCUMENTS SHALL NOT BE DISTRIBUTED, LOANED OR COPIED WITHOUT THE WRITTEN PERMISSION OF THE DISTRICT IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF FLORIDA LAW. THE DISTRICT MUST BE ADVISED IMMEDIATELY AS TO ANY CHANGES IN CUSTODIAN FROM THOSE PERSONS LISTED IN CORRESPONDENCE FOR ORIGINAL DISTRIBUTION, IF THE DOCUMENTS ARE LOST OR STOLEN, OR IF THERE IS IMPROPER DISCLOSURE OR UNAUTHORIZED USE OF THE INFORMATION IN THE DOCUMENT. UPON COMPLETION OF USE, WORK, PROJECT, OR CONTRACT, THE DESIGN PROFESSIONAL/CONTRACTOR SHALL SHRED OR BURN ANY DUPLICATE RECORDS.

8.13.5 Identifying Correspondence that May Contain Exempt or Confidential Information. In order to assist in the identification of electronic records (email) which may be exempt from public records requests and protect information that is exempt from disclosure, the DESIGN PROFESSIONAL (as either the writer or receiver of an electronic document which may contain confidential and/or exempt information) must use the letters "PREX" (in caps) as the first four letters of the subject line of the electronic document. The PREX identifier should be used if the email contains confidential and/or exempt information in the body and/or an attachment.

8.13.6 Notification of Improper Disclosure. DISTRICT must be notified immediately if the Confidential Information is lost or stolen or of any improper disclosure or unauthorized use of the Confidential Information. The DESIGN PROFESSIONAL shall make a report to the DISTRICT not more than seven (7) business days after the DESIGN PROFESSIONAL learns of such an improper disclosure or unauthorized use of the Confidential Information. The DESIGN PROFESSIONAL's report shall identify, to the extent known, the nature of the improper disclosure or unauthorized use, the Confidential Information disclosed or used, who made the disclosure of or used the information, what the DESIGN PROFESSIONAL has done or shall do to mitigate any harmful effects of the improper disclosure or unauthorized use, and what corrective action the DESIGN PROFESSIONAL has taken or shall take to prevent future similar unauthorized use or improper disclosure. The DESIGN PROFESSIONAL shall provide any other such information about the unauthorized use or improper disclosure as reasonably requested by

the DISTRICT. The DESIGN PROFESSIONAL shall take all steps the DISTRICT deems advisable to mitigate, resolve and/or prevent the unauthorized use or improper disclosure of the Confidential Information.

8.13.7 Survival. The nondisclosure provisions of this Section shall survive the termination or expiration of this Contract. The DESIGN PROFESSIONAL's duty to hold Confidential Information in confidence shall remain in effect until DISTRICT sends the DESIGN PROFESSIONAL written notice releasing the DESIGN PROFESSIONAL from the provisions of this Section.

8.13.8 Enforcement. The DESIGN PROFESSIONAL understands that non-compliance with the terms of this Section may result in termination of the contract as well as subject itself to any other remedies available to the DISTRICT at law or in equity.

IF THE PROGRAM MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROGRAM MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: 1515 N. FLAGLER DR, SUITE 101 WEST PALM BEACH, FL 33401 OR BY EMAIL AT RECORDSCUSTODIAN@HCDPBC.ORG OR BY TELEPHONE AT 561-642-1022.

8.14 LAW AND VENUE; REMEDIES.

This Contract shall be governed by, construed and enforced in accordance with the laws of the State of Florida. The parties acknowledge that venue of all actions arising out of or related to the Contract shall be proper only in a state court of competent jurisdiction in Palm Beach County Florida.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

DISTRICT and DESIGN PROFESSIONAL agree that the notice and cure provisions of Florida Statute Chapter 558 shall not apply to this Contract.

Pursuant to Section 558.0035 Florida Statutes, the DESIGN PROFESSIONAL is the responsible party for the professional services it agrees to provide under this Contract. No individual

professional employee, agent, director, officer or principal may be individually liable for negligence arising out of this Contract, as long as the DESIGN PROFESSIONAL maintains the professional liability insurance required under this Contract and as long as any damages are solely economic in nature and the damages do not extend to personal injuries or property not subject to this Contract.

8.15 INDEMNIFICATION.

The DESIGN PROFESSIONAL shall indemnify and hold harmless and defend the DISTRICT, its agents, its officers and employees, from and against any and all claims, liabilities, damages, losses, and costs including, but not limited to reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the DESIGN PROFESSIONAL, and other persons employed or utilized by the DESIGN PROFESSIONAL, in the performance of this Contract. Nothing contained in this provision or in the Contract with DESIGN PROFESSIONAL shall be construed or interpreted as consent by DISTRICT to be sued, nor as a waiver of sovereign immunity beyond the limited waiver provided in Section 768.28, Florida Statutes, as amended from time to time. The foregoing indemnification provision shall be the only indemnification provision in this Contract or any other agreement with DESIGN PROFESSIONAL.

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, each party shall bear its own attorney's fees, court costs and all expenses (including taxes and, without limitation, all such fees, costs, and expenses incident to appeals) incurred in that action or proceeding.

This section shall survive termination or expiration of this Contract.

8.16 CONFLICT OF INTEREST.

The DESIGN PROFESSIONAL represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III of Florida Statutes. The DESIGN PROFESSIONAL further represents that no person having any such conflict of interest shall be employed for said performance of services. DESIGN PROFESSIONAL shall provide DISTRICT with an executed Conflict of Interest Disclosure Form, attached as **Exhibit C** and incorporated herein.

The DESIGN PROFESSIONAL shall promptly notify the DISTRICT's Representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the

DESIGN PROFESSIONAL's judgement or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the DESIGN PROFESSIONAL may undertake and request an opinion of the DISTRICT as to whether the association, interest or circumstance would, in the opinion of the DISTRICT, constitute a conflict of interest if entered into by the DESIGN PROFESSIONAL. The DISTRICT agrees to notify the DESIGN PROFESSIONAL of its opinion by certified mail within thirty (30) days of receipt of notification by the DESIGN PROFESSIONAL. If, in the opinion of the DISTRICT, the prospective business association, interest or circumstance would not constitute a conflict of interest by the DESIGN PROFESSIONAL, the DISTRICT shall so state in the notification and the DESIGN PROFESSIONAL shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the DISTRICT by the DESIGN PROFESSIONAL under the terms of this Contract.

8.17 EXCUSABLE DELAYS.

The DESIGN PROFESSIONAL shall not be considered in default by reason of any failure in performance if such failure arises out of causes beyond the control of the DESIGN PROFESSIONAL or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God; natural or public health emergencies; labor disputes; freight embargoes; and abnormally severe and unusual weather conditions.

Upon the DESIGN PROFESSIONAL's request, the DISTRICT shall consider the facts and extent of any failure to perform the work and, if in the opinion of the DISTRICT the DESIGN PROFESSIONAL's failure to perform was without it or its subcontractors fault or negligence, the Contract shall be revised accordingly; subject to the DISTRICT's rights to change, terminate, or stop any or all of the work at any time.

8.18 ARREARS.

The DESIGN PROFESSIONAL shall not pledge the DISTRICT's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The DESIGN PROFESSIONAL further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

8.19 NOTICES.

All notices required in this Contract if sent to the DISTRICT shall be mailed to:

Health Care District of Palm Beach County
Director, Construction Services Division
1515 N. Flagler Dr.
West Palm Beach, Fl, 33401

with copy to:

Health Care District of Palm Beach County
AVP, Support Services Department
1515 N. Flagler Dr.
West Palm Beach, FL 33401

AND

Health Care District of Palm Beach County
Office of General Counsel
1515 N. Flagler Dr.
West Palm Beach, FL 33401

and if sent to the DESIGN PROFESSIONAL shall be mailed to:

8.20 SEVERABILITY.

If any provision(s), or portion(s) of a provision(s) of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held to be invalid, illegal or unenforceable for any reason whatsoever, the validity, legality and enforceability of the remaining provision(s), or part of the provision(s), shall not in any way be affected or impaired thereby; and if possible the invalid, illegal, or unenforceable provision shall be interpreted to the fullest extent possible to be enforceable and to give effect to the intent manifested by the provision(s), or portion(s) thereof, held invalid, illegal or unenforceable.

8.21 ENTIRETY OF CONTRACTUAL AGREEMENT.

8.21.1 Entire Agreement. The DISTRICT and the DESIGN PROFESSIONAL agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

8.21.2 Exhibits. This Contract includes the following exhibits, which are attached hereto and made a part hereof:

Exhibit A	-	Scope of Work and Fee
Exhibit B	-	Insurance Certificates

- Exhibit C** - Conflict of Interest Disclosure Form
- Exhibit D** - Coercion of Labor Attestation

8.22 SUCCESSORS AND ASSIGNS.

The DISTRICT and the DESIGN PROFESSIONAL each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Neither the DISTRICT nor the DESIGN PROFESSIONAL shall assign, sublet, convey or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the DISTRICT which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the DISTRICT and the DESIGN PROFESSIONAL.

8.23 PUBLIC ENTITY CRIMES.

As provided in F.S. 287.132-133, by entering into this Contract or performing any work in furtherance hereof, the DESIGN PROFESSIONAL certifies that it, its affiliates, suppliers, subcontractors and design professionals who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

8.24 RESERVED

8.25 SCRUTINIZED COMPANIES.

8.25.1 As provided in F.S. 287.135, as amended from time to time, by entering into this Contract or performing any work in furtherance hereof, the DESIGN PROFESSIONAL certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725. Pursuant to F.S. 287.135(3)(b), if DESIGN PROFESSIONAL is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this Contract may be terminated at the option of the DISTRICT.

8.25.2 **When contract value is greater than \$1 million:** As provided in F.S. 287.135, by entering into this Contract or performing any work in furtherance hereof, the DESIGN PROFESSIONAL certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria.

8.25.3 If the DISTRICT determines, using credible information available to the public, that a false certification has been submitted by DESIGN PROFESSIONAL, this Contract may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Contract shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of Contract renewal, if applicable.

8.26 COMPLIANCE WITH LAWS AND REGULATIONS.

The DESIGN PROFESSIONAL shall comply with all laws, policies and procedures, resolutions, ordinances and regulations in effect at the time of performance of services under this Contract and applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. DESIGN PROFESSIONAL is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered under this Contract.

8.27 NO THIRD PARTY BENEFICIARY.

Except as specifically and expressly provided for herein, no provision of this Contract is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Contract, including any employees of the DISTRICT and the DESIGN PROFESSIONAL.

8.28 ACCESS AND AUDITS.

The DESIGN PROFESSIONAL shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work under this Contract for at least five (5) years after completion or termination of this Contract. Upon ten (10) business days' prior written notice to DESIGN PROFESSIONAL, the DISTRICT shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the DESIGN PROFESSIONAL's place of business.

8.29 SECTION 179D RESPONSIBILITIES.

Under 26 USC 179D (Section 179D), a building owner may take an income tax deduction for improvements meeting certain energy savings criteria. Section 179D allows the DISTRICT to allocate this income tax deduction to the firm primarily responsible for designing the qualifying property or allocate the deduction among the firms who contributed to the creation of the technical specifications. If applicable, the DESIGN PROFESSIONAL is responsible for applying to the DISTRICT for the Section 179D deduction on behalf of all firms who created the technical specifications and recommending to the DISTRICT the allocation of the deduction. The District's Representative will provide to DESIGN PROFESSIONAL the DISTRICT's forms related to the Section 179D deduction when requested.

8.30 E-VERIFY - EMPLOYMENT ELIGIBILITY

8.30.1 DESIGN PROFESSIONAL warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended, and that it: (1) is registered with the E-Verify System (E-Verify.gov) and uses the E-Verify System to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of the DESIGN PROFESSIONAL's sub-design professionals performing any duties and obligations under this Contract are registered with the E-Verify System and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

8.30.2 DESIGN PROFESSIONAL shall obtain from each of its sub design professionals an affidavit stating that the sub design professionals does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. DESIGN PROFESSIONAL shall maintain a copy of any such affidavit from a sub design professionals for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Contract which requires a longer retention period.

8.30.3 DISTRICT shall terminate this Contract if it has a good faith belief that DESIGN PROFESSIONAL has knowingly violated Section 448.09(1), Florida Statutes as may be amended.

8.30.3.1 If DISTRICT has a good faith belief that DESIGN PROFESSIONAL's sub design professional has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, DISTRICT shall notify DESIGN PROFESSIONAL to terminate its contract with the sub design professional and DESIGN PROFESSIONAL shall immediately terminate its contract with the sub design professional.

8.30.4 If DISTRICT terminates this Contract pursuant to the above, DESIGN PROFESSIONAL shall be barred from being awarded a future contract by DISTRICT for a period of one (1) year from the date on which this Contract was terminated. In the event of such contract termination, DESIGN PROFESSIONAL shall also be liable for any additional costs incurred by DISTRICT as a result of the termination.

8.31 INTERACTIONS WITH DISTRICT STAFF

In all interactions with DISTRICT staff, DESIGN PROFESSIONAL and its employees will conduct themselves in a professional manner at all times and treat DISTRICT staff with respect and dignity. Use of offensive and demeaning language will not be tolerated. Failure to comply with this requirement will be considered a default under this Contract and may result in termination of this Contract.

8.32 DISCLOSURE OF FOREIGN GIFTS AND CONTRACTS WITH FOREIGN COUNTRIES OF CONCERN

Pursuant to F.S. 286.101, as may be amended, by entering into a contract or performing any work in furtherance thereof, the DESIGN PROFESSIONAL certifies that it has disclosed any current or prior interest of, any contract with, or any grant or gift received from a foreign country of concern where such interest, contract, or grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract or grant or gift was received or in force at any time during the previous five (5) years.

8.33 COERCION OF LABOR

PROGRAM MANAGER attests and warrants that PROGRAM MANAGER does not use coercion of labor or services as defined in section 787.06, Florida Statutes (2024). PROGRAM MANAGER or representative of PROGRAM MANAGER must sign and date the Affidavit attached as **Exhibit E** which is incorporated herein by reference.

8.34 EFFECTIVE DATE.

This Contract is expressly contingent upon the approval of the Health Care District of Palm Beach County Board of Commissioners and shall become effective only when signed by all parties and approved by the Health Care District of Palm Beach County Board of Commissioners. This Contract may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same contract.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their respective authorized representatives on the date(s) set forth below.

[DESIGN PROFESSIONAL NAME]

By: _____

Print Name: _____

Position: _____

Date: _____

HEALTH CARE DISTRICT OF PALM BEACH COUNTY

By: _____

Darcy J. Davis

Chief Executive Officer

Date: _____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____

Bernabe A. Icaza, Esq.

General Counsel

Project No.:
Project Name:

CONTRACT EXHIBIT A

SCOPE OF WORK & FEE

CONTRACT EXHIBIT B
INSURANCE CERTIFICATES

CONTRACT EXHIBIT C
CONFLICT OF INTEREST DISCLOSURE FORM

CONTRACT EXHIBIT D
COERCION OF LABOR ATTESTATION

[DESIGN PROFESSIONAL] does not use coercion for labor or services as defined in section 787.06, Florida Statutes (2024).

Under penalties of perjury, I declare that I have read the foregoing statement and that the facts stated in it are true.

Printed Name:

Title:

Signature:

Date: