

**CONTRACT FOR PROFESSIONAL SERVICES  
(Architect's Form)**

**CHAPTER 1  
PROFESSIONAL'S AGREEMENT**

This Contract For Professional Services is entered into between **Lake County, Florida, a political subdivision of the State of Florida**, hereinafter the "Owner", and \_\_\_\_\_, a \_\_\_\_\_ corporation, hereinafter the "Professional." This Agreement is executed under seal, and shall be effective on the date signed by the last party to do so.

**ADDRESSES AND AUTHORIZED REPRESENTATIVES:**

The authorized representatives and addresses of the Owner and the Professional are:

**OWNER:**

Representative: Jim Bannon, Director, Facilities Development & Management  
Address: P.O. Box 7800, 315 West Main Street.  
City, State, Zip: Tavares, Florida 32778  
Office: (352) 253- 6144  
Fax: (352) 343-9668  
E-mail: jbbannon@co.lake.fl.us

**PROFESSIONAL:**

Representative:  
Address:  
City, State, Zip:  
Office:  
Fax:  
E-mail:

**OWNER'S PROJECT IDENTIFICATION INFORMATION:**

Project Title:  
Project Location  
Project ID Number:

It is the Owner's intent that the Project be constructed by the following Builder type *[Check one]*:

Construction Manager (At-Risk Guaranteed Maximum Price)

- General Contractor

If the Project is to be constructed by a General Contractor, the General Contractor shall be selected in one of the following ways *[Check one]*:

- It is the Owner's intent that the Work be performed pursuant to a negotiated Contract For Construction.
- It is the Owner's intent that the Work be performed pursuant to a competitively bid Contract For Construction.

## RECITALS

- A. The Owner intends to construct the Project and is engaging the Professional to perform certain services for the Project.
- B. The Owner and Professional each acknowledges that it will act in good faith in carrying out its duties and obligations.
- C. The Owner's engagement of the Professional is based upon the Professional's representations to the Owner that it (i) is an organization of professionals experienced in the type of services the Owner is engaging the Professional to perform; (ii) is authorized and licensed to do business in the State of Florida; (iii) is qualified, willing and able to perform professional services for the Project; and (iv) has the expertise and ability to provide professional services which will meet the Owner's objectives and requirements, and which will comply with the requirements of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.
- D. The Owner and Professional each acknowledges that it has reviewed and familiarized itself with this Contract For Professional Services, including the documents enumerated in Article 1, and agrees to be bound by the terms and conditions contained therein.

**NOW, THEREFORE**, for good and valuable consideration, the parties agree as follows:

## ARTICLE 1 CONTRACT DOCUMENTS

- 1.1 The "Contract For Professional Services" is comprised of the following documents:

This "Chapter 1 – Professional's Agreement" (hereafter "Chapter 1"), including the foregoing recitals A. through D., and all attached documents, appendices and addenda;

"Chapter 2 - Professional's Required Services" (hereafter "Chapter 2"), and all attached documents, appendices and addenda;

"Chapter 3 - General Terms And Conditions Of Professional Services Contracts" (hereafter "Chapter 3"), and all attached documents, appendices and addenda;

and

Additional documents listed hereafter, if any:

- None
- Additional Documents:

All relevant Addenda, if any, are attached hereto as Appendix D and incorporated herein.

- 1.2 Documents not included or expressly contemplated in this Article 1 do not, and shall not, form any part of this Contract For Professional Services.

## **ARTICLE 2 NOTICES**

- 2.1 Unless otherwise provided, all notices shall be in writing and considered duly given if original is (i) hand delivered; (ii) delivered by telex, facsimile, or telecopy; or (iii) sent by U.S. Mail, postage prepaid. All notices shall be given to the addresses set forth above. Notices hand delivered or delivered by telex, facsimile, or telecopy shall be deemed given the next business day following the date of delivery. Notices given by U.S. Mail shall be deemed given as of the second business day following the date of posting.

## **ARTICLE 3 DESIGN NOT TO EXCEED**

- 3.1 **Owner's Budget.** The Professional understands and acknowledges that the budget for the Project \_\_\_\_\_ (\$ \_\_\_\_\_), hereinafter the "Budgeted Total Project Construction Cost".
- 3.2 **Limitation On Total Project Construction Cost.** The Professional agrees to design the Project so that the actual Total Project Construction Cost as bid does not exceed the Budgeted Total Project Construction Cost recited above.
- 3.3 **Owner's Remedies For Excessive Cost.** If the lowest bona fide bid or negotiated Total Project Construction Cost exceeds the Owner's Budgeted Total Project Construction Cost by more than ten percent (10%) the Owner may, in addition to any other remedies provided in this Contract For Professional Services, (i) accept the bid or negotiated Total Project Construction Cost; (ii) require the Professional, at no cost to the Owner, to re-bid or re-negotiate the Work; (iii) cancel the Work or any portion of the Work; (iv) revise the scope of the Work, as required to reduce the Total Project Construction Cost; or (v) require the Professional, at no cost to the Owner, to modify the Construction Documents and re-bid or re-negotiate the Work to result in a bid or negotiated Total Project Construction Cost within the Budgeted Total Project Construction Cost. In order to reduce the Total Project Construction Cost to the Budgeted Total Project Construction Cost, the Professional shall, in addition to the above, at the Owner's request and at no additional cost to the Owner, (i) provide value engineering to reduce the Total Project

Construction Cost to the Budgeted Total Project Construction Cost; (ii) assist the Owner in redefining the scope of the Project; and (iii) incorporate all scope reductions and Project modifications into the modified Construction Documents.

#### **ARTICLE 4 COMPENSATION OF PROFESSIONAL**

- 4.1 **Compensation For Required Services.** The Owner shall compensate the Professional for Required Services on a Percentage-Not-to-Exceed basis. In accordance with the time schedule contained in the Professional's Payment Schedule, attached as Appendix A, the Owner shall pay the Professional \_\_\_\_\_ **Percent ( \_\_\_\_%)** of the Final Construction Cost for professional service fees, excluding reimbursable expenses, as defined in the Scope of Services attached hereto as Appendix B, (the "Professional Contract Price"), not to exceed \_\_\_\_\_ **Dollars (\$\_\_\_\_\_)**.
- 4.2 **Compensation For Additional Services.** The Owner and the Professional shall agree that the Professional's performance of Additional Services over and above that defined in the Scope of Services attached hereto as Appendix B, shall be performed on the basis of an amount mutually agreed to in writing by the Owner and Professional prior to the performance of such services. A duly authorized change order shall be executed in accordance with the Owner's Purchasing Policy and Procedures, a copy of which shall be made available to the Professional upon request.
- 4.3 **Compensation For Expenses.** The Owner shall compensate the Professional for an amount not to exceed \_\_\_\_\_ **Dollars (\$\_\_\_\_\_)** for reimbursable expenses as set forth in the Professional's Scope of Services attached hereto in Appendix B.
- 4.4 **Professional's Mark-up.** To the extent that the Professional engages others to perform services, the maximum allowable mark-up the Professional shall be entitled to charge the Owner shall be ten percent (10%) of the actual expense or cost to the Professional.
- 4.5 **Invoices and Progress Reports.** Invoices shall be submitted to the Owner's Representative at the address set forth above. Invoices and progress reports shall be submitted in the same form as attached hereto and incorporated herein by reference as Appendix E. Professional shall submit invoices and supporting documentation at the end of each month documenting the percent of completion of each task and requesting payment based upon such percent completion. Payments shall be made in accordance with Part VII, Chapter 218, Florida Statutes.
- 4.6 **Grant Funding.** The Professional agrees and acknowledges that if this Project is to be funded by Federal and State grant monies, or other local agency monies, the Professional shall agree to cooperate with the Owner in order to assure compliance with all requirements of the funding entity applicable to use of the monies, including providing access to and the right to examine relative documents related to the Project and as specifically requested by the Federal or State granting agency. The Professional additionally hereby agrees to comply with all requirements of the funding entity applicable to the use of the monies, including receiving no payment until all required

forms are completed and submitted. A copy of the requirements shall be supplied to the Professional by the Owner upon request.

**Or**

The Professional agrees and acknowledges that this Project is to be funded by Federal and State grant monies, to wit:

***Insert name of grant and any identification number***

As such, the Professional shall agree to cooperate with the Owner in order to assure compliance with all requirements of the funding entity applicable to use of the monies, including providing access to and the right to examine relative documents related to the Project and as specifically requested by the Federal or State granting agency. Additionally, the Professional shall abide by the following specific provisions of the above-referenced grant:

***List the specific provisions as detailed in the grant documents to be included in subgrantee/contractor agreements***

## **ARTICLE 5 SPECIFIC INSURANCE REQUIREMENTS**

The Professional shall provide and maintain at all times during the term of any contract, without cost or expense to the Owner, policies of insurance, with a company or companies authorized to do business in the State of Florida, and which are acceptable to the Owner, insuring the Professional against any and all claims, demands or causes of action whatsoever, for injuries received or damage to property relating to the performance of duties, services and/or obligations of the Professional under the terms and provisions of the contract. The Professional is responsible for timely provision of certificate(s) of insurance to the Owner at the certificate holder address evidencing conformance with the contract requirements at all times throughout the term of the contract.

Such policies of insurance, and confirming certificates of insurance, shall insure the Professional is in accordance with the following minimum limits:

General Liability insurance on forms no more restrictive than the latest edition of the Occurrence Form Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

Each Occurrence/General Aggregate	\$1,000,000/2,000,000
Products-Completed Operations	\$2,000,000
Personal & Adv. Injury	\$1,000,000
Fire Damage	\$50,000
Medical Expense	\$5,000
Contractual Liability	Included

Automobile liability insurance, including owned, non-owned, and hired autos with the following minimum limits and coverage:

Combined Single Limit	\$1,000,000
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Workers' compensation insurance based on proper reporting of classification codes and payroll amounts in accordance with Chapter 440, Florida Statutes, and/or any other applicable law requiring workers' compensation (Federal, maritime, etc). If not required by law to maintain workers compensation insurance, the Professional must provide a notarized statement that if he or she is injured; he or she will not hold the Owner responsible for any payment or compensation.

Employers Liability insurance with the following minimum limits and coverage:

Each Accident	\$1,000,000
Disease-Each Employee	\$1,000,000
Disease-Policy Limit	\$1,000,000

Professional liability and/or specialty insurance (medical malpractice, engineers, architect, consultant, environmental, pollution, errors and omissions, etc.) insurance as applicable, with minimum limits of \$1,000,000 and annual aggregate of \$2,000,000.

The following additional coverage must be provided if a dollar value is inserted below:

Loss of Use at coverage value:	\$ 0
Garage Keepers Liability at coverage value:	\$ 0

Lake County, a Political Subdivision of the State of Florida, and the Board of County Commissioners, shall be named as additional insured as their interest may appear on the general liability insurance policy.

The certificate(s) of insurance shall provide for a minimum of thirty (30) days prior written notice to the Owner of any change, cancellation, or nonrenewal of the provided insurance. It is the Professional's specific responsibility to ensure that any such notice is provided within the stated timeframe to the certificate holder.

Certificate(s) of insurance shall identify the applicable solicitation (ITB/RFP/RFQ) number in the Description of Operations section of the Certificate.

Certificate holder shall be:

LAKE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA,  
AND THE BOARD OF COUNTY COMMISSIONERS.  
P.O. BOX 7800  
TAVARES, FL 32778-7800

Certificates of insurance shall evidence a waiver of subrogation in favor of the Owner, that coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium payment by the Owner.

The Professional shall be responsible for subconsultants and their insurance. Subconsultants are to provide certificates of insurance to the prime vendor evidencing coverage and terms in accordance with the Professional's requirements.

All self-insured retentions shall appear on the certificate(s) and shall be subject to approval by the Owner. At the option of the Owner, the insurer shall reduce or eliminate such self-insured retentions or the Professional or sub-consultants shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

The Owner shall be exempt from, and in no way liable for, any sums of money, which may represent a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention shall be the sole responsibility of the Professional and/or sub-consultant providing such insurance.

Failure to obtain and maintain such insurance as set out above will be considered a breach of contract and may result in termination of the contract for default.

Neither approval by the Owner of any insurance supplied by the Professional or sub-consultant(s), nor a failure to disapprove that insurance, shall relieve the vendor or sub-consultant(s) of full responsibility for liability, damages, and accidents as set forth herein.

## **ARTICLE 6 PERSONNEL AND CONSULTANT CHARTS**

- 6.1 The Professional shall prepare and attach as Appendix C to this Agreement the Professional's Personnel Chart which lists by name, job category and responsibility the Professional's primary employees who will work on the Project. The Professional shall promptly inform the Owner in writing of any proposed replacements, the reasons therefor, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right to reject any proposed replacement.
- 6.2 The Professional shall (i) prepare and attach as Appendix D to this Agreement the Professional's Consultants Chart which lists by name and general duties each consultant retained by the Professional who will provide services with respect to the Project and the names of key team members in each Consultant's firm who will be performing services on behalf of the Consultant; (ii) not enter into any agreement with any consultant to which the Owner raises a timely objection; and (iii) promptly inform the Owner in writing of any proposed replacements, the reasons therefor, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right to reject any proposed replacement.

## **ARTICLE 7 PROFESSIONAL SERVICES SCHEDULE**

- 7.1 **Commencement Of Services.** The Professional shall commence Project services within ten (10) business days of issuance of the Notice to Proceed.

7.2 **Final Completion.** The Project anticipated date of Final Completion for the Project shall be \_\_\_\_\_ for the complete Scope of Services.

**ARTICLE 8  
AMENDMENTS TO CHAPTER 3**

8.1 The following additions to, deletions from and/or modifications to the specifically referenced articles and paragraphs of Chapter 3 shall take precedence over the provisions of those referenced articles and paragraphs as follows:        **X**        None

**PROFESSIONAL**

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COUNTY**

ATTEST:

LAKE COUNTY, through its  
BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Neil Kelly, Clerk  
of the Board of County  
Commissioners of Lake  
County, Florida

\_\_\_\_\_  
Welton G. Cadwell  
Chairman

This \_\_\_\_\_ day of \_\_\_\_\_, 2009

Approved as to form and legality:

\_\_\_\_\_  
Sanford A. Minkoff  
County Attorney



**APPENDIX A**  
**PROFESSIONAL'S PAYMENT SCHEDULE**  
*{Incorporated into the Scope of Services in Appendix B}*

**APPENDIX B**  
**SCOPE OF SERVICES AS PREPARED PROFESSIONAL**  
**DATED \_\_\_\_\_**

**APPENDIX C  
PROFESSIONAL'S PERSONNEL CHART**

**APPENDIX D**  
**PROFESSIONAL'S CONSULTANTS CHART**

## APPENDIX E FORM DOCUMENTS FOR INVOICES AND PROGRESS PAYMENTS

### CONSULTANT'S APPLICATION TO LAKE COUNTY, FLORIDA FOR PAYMENT

Project-Architectural Services for \_\_\_\_\_ Firm Name  
Insert Project Name \_\_\_\_\_ Street  
 \_\_\_\_\_ City, State

Insert Fed Id # Here  
**FEDERAL ID NO.**

<b>Invoice Period From/To:</b>	<u>Insert Date</u>	<u>Insert Date</u>	<b>Application No</b>	<u>Insert Number</u>
<b>Lake County RSQ #</b>	<u>Insert Number</u>		<b>Consultants Invoice No.</b>	<u>Insert Number</u>
<b>Purchase Order No.</b>	<u>Insert Number</u>		<b>Consultants Project No.</b>	<u>Insert Number</u>
<b>End Of Services Date</b>	<u>Insert Date</u>		<b>Contact Person</b>	<u>Insert Name</u>
<b>Total Fee</b>	<u>Insert Amount</u>		<b>Telephone Number</b>	<u>Insert Number</u>
			<b>Invoice Date</b>	<u>Insert Date</u>

	Percent Complete	Contract Limits	Total Billed To Date	Previous Billings	Amount Due This Period
Schematic Design	<u>Enter %</u>	<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>
Design Development	<u>Enter %</u>	<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>
Construction Documents	<u>Enter %</u>	<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>
Bidding/Permitting	<u>Enter %</u>	<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>
Construction Administration	<u>Enter %</u>	<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>
Reimbursables	<u>Enter %</u>	<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>
Subconsultants					
<u>Enter Name/Subconsultant</u>	<u>Enter %</u>	<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>
<b>CURRENT AMOUNT BILLED</b>		<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>	<u>\$ Enter Amount</u>

Current Amount Billed is associated with Progress Report No. \_\_\_\_\_

We hereby certify that the Total Amount shown on this invoice indicates the actual percent of work completed to date on this project and that our subconsultants, subcontractors, and suppliers related to this project have been paid their proportional share of all previous payments received from the Owner.

Consultant Project Manager \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_ Add Date \_\_\_\_\_

Remit Address Firm \_\_\_\_\_  
Street \_\_\_\_\_  
City and State \_\_\_\_\_

Progress Report No. (Insert Number beginning at 1)

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**Period:** (Insert Date) thru (Insert Date)

**Project:** Project Title

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**Project Control/Coordination**

- Preparation of Building Permit Submittal
- Preparation of SJWMD Permit Submittal

**Schematic Design**

- Complete

**Design Development**

- Complete on 5/5/09

**Construction Documents**

- Preparing 100% Submittal
- Preparing tree removal and replacement permit

**Meetings**

- None

**Bidding/Permitting**

- Submitted SJWMD Stormwater Permit on 2/14/09
- Submitted Building Permit 2/27/09

**Construction Administration**

- No activity

**Expenses**

- Miscellaneous file and design documentation
- Travel from Tampa Office

**Two Week Outlook**

- Submit the 100% Construction Documents Submittal including Lake County's review comments
- Submit Site Plan Permit to Lake County

By:

Date:

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Name /Title

## CHAPTER 2 PROFESSIONAL'S REQUIRED SERVICES

### ARTICLE 1 GENERAL PROJECT SERVICES

- 1.1 **Essential Services.** The Professional agrees to provide all necessary architectural and engineering services required to professionally accomplish the Scope of Services.
- 1.2 **Project Design Schedule And Professional Coordination.**
- 1.2.1 The Professional shall be responsible for coordinating all other Owner's consultants and shall be required to keep the Project on schedule.
- 1.2.2 The Professional shall, not more than fourteen (14) calendar days after the execution of this Contract For Professional Services, prepare and submit a Project Design Schedule for review and acceptance by the Owner. The Project Design Schedules shall include all pertinent Project dates:
- .1 The Project Design Schedule shall include the design completion date, any guidelines and milestone dates required by the Owner, sufficient time for review of documents and submittals, and the date of Final Completion as required by the Owner.
  - .2 The Project Design Schedule shall include and properly coordinate all dates for performance of services and tasks so that the design and construction can be completed in a timely and orderly fashion consistent with the required date of Final Completion.
  - .3 By reviewing the Project Design Schedule, the Owner does not assume any of the Professional's responsibility that the Project Design Schedule be coordinated or complete, or for orderly and timely completion of the design and construction by the required date of Final Completion, and review and acceptance of the Project Design Schedule by the Owner shall not relieve the Professional of any of its responsibilities.
- 1.2.3 The Professional shall determine and promptly notify the Owner in writing when it believes adjustments to the Project Design Schedule is necessary, but no such adjustments shall be effective unless approved in writing by the Owner.
- 1.3 **Project Approval.** As required for the Project, the Professional shall
- (i) promptly secure all approvals from governing authorities with jurisdiction over the Project. Without limitation, the Professional shall timely assist the Owner in making application for rezoning, site plan approval, local variances or other approvals, including completion of all necessary applications and supporting documentation; and
  - (ii) attend any and all meetings required to secure all approvals from governing

authorities with jurisdiction over the Project .

- 1.4 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in General Project Services are listed in Appendix 1 and incorporated herein by reference.

## **ARTICLE 2 PRELIMINARY DESIGN SERVICES**

- 2.1 **Investigation And Analysis.** The Professional shall:

- (i) visit and visually observe the Project Site and any structure(s) or other man-made features to be modified;
- (ii) familiarize itself with the survey, and the location of all existing buildings, utilities, conditions, streets, equipment, components and other attributes having or likely to have an impact on the Project;
- (iii) familiarize itself with the Owner's layout and design requirements, conceptual design objectives, and Budgeted Total Project Construction Cost;
- (iv) familiarize itself with pertinent Project dates and programming needs, including the Project Design Schedule;
- (v) review all Project geotechnical, Hazardous Substance, structural, chemical, electrical, mechanical and construction materials tests, investigations and recommendations, if any;
- (vi) familiarize itself with, review and analyze local zoning restrictions and requirements;
- (vii) review and analyze the Project Threatened and Endangered Species (T&E) report for habitat issues such as the presence of gopher turtles, scrub jays, etc.;
- (viii) gather any other information necessary for a thorough understanding of the Project.

If the Project involves modifications to any existing structure(s) or other man-made feature(s) on the Project site, the Professional shall also:

- (ix) review all available as-built and record drawings, plans and specifications; and
- (x) visually observe the existing structure(s) and man-made feature(s) to identify to the extent possible existing deficiencies and ascertain the specific locations of pertinent structural components.
- (xi) Analyze and coordinate with the Owner the target strategy for attaining recognized criteria for sustainable/green building design.

Professional shall be entitled to rely on the accuracy and completeness of all Owner-provided information in accordance with Chapter 3, section 2.1.5.



2.2 **Preliminary Design And Estimate.** The Professional shall, based upon its activities pursuant to Paragraph 2.1:

- (i) in accordance with schedule requirements, provide to the Owner preliminary design drawings including, but not limited to plans, elevations and cross-sections, as well as alternative design recommendations and proposals;
- (ii) in accordance with the design schedule regularly meet with the Owner and, if applicable, the Owner's construction manager, to discuss and review preliminary design drawings;
- (iii) resolve all problems, conflicts, defects or deficiencies identified during the review and evaluation of the preliminary design drawings;
- (iv) upon completion of the preliminary design drawings, prepare and submit to the Owner and, if applicable, the Owner's construction manager, a preliminary estimate of Total Project Construction Cost broken down by line item into major construction disciplines and systems;
- (v) in accordance with the project design schedule, provide to the Owner six (6) copies of preliminary design drawings at fifty percent (50%) and ninety-five percent (95%) completion.

2.3 **Recommended Testing.** The Professional shall prepare scopes of work, including preliminary testing parameters for geotechnical work, soil borings and load tests for soil-bearing capacity, to assist the Owner in securing all necessary Project testing. Owner shall provide any required testing (i.e. soils, hazardous materials, etc.) and shall provide boundary and topographic surveys, if any, in accordance with the Scope of Services set forth in Appendix B, Chapter 1.

2.4 **Excessive Cost Estimate.** If the preliminary estimate of Total Project Construction Cost exceeds the Budgeted Total Project Construction Cost, the Owner may:

- (i) accept the preliminary estimate of Total Project Construction Cost and revise the Budgeted Total Project Construction Cost;
- (ii) cancel the Project or any portion thereof;
- (iii) terminate this Contract For Professional Services;
- (iv) revise the scope of the Project as required to reduce the preliminary estimate of Total Project Construction Cost; or
- (v) require the Professional, at no cost to the Owner, to modify the preliminary design drawings in a manner which will result in an estimate of Total Project Construction Cost within the budgeted Total Project Construction Cost.

2.5 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in Preliminary Design Services are listed in Appendix 1 and Appendix B, Chapter 1, and incorporated herein by reference.

**ARTICLE 3  
CONSTRUCTION DOCUMENTS SERVICES**

3.1 **Construction Documents.** Any modifications authorized by the Owner, any adjustments authorized by the Owner to the Budgeted Total Project Construction Cost, and upon written approval of the preliminary design drawings by the Owner, the Professional shall prepare Construction Documents which detail the Work within the Budgeted Total Project Construction Cost, as adjusted. Construction Documents shall:

- (i) be complete, accurate, coordinated, and adequate for bidding, permit approval, negotiating and constructing the Work; provided, however, that nothing contained herein shall be deemed to require the Professional to exercise a greater standard of care than can reasonably be expected from other architects and engineers performing similar services to those required herein;
- (ii) take into account existing Site features and structures, and safely and efficiently integrate the Work into existing Site features and structures;
- (iii) include all labor, material, and equipment necessary to complete the Work;
- (iv) portray Work which meets the Owner's disclosed, demonstrated or documented aesthetic, functional and operational objectives;
- (v) be fit and proper for the purpose intended;
- (vi) comply with all applicable laws, statutes, building codes, rules and regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project in effect on the date the documents are delivered to the Owner; and
- (vii) include all appropriate and advisable Project testing requirements including, without limitation, geotechnical, Hazardous Substance, structural, chemical, electrical, or mechanical tests and investigations, and construction materials testing.

In accordance with the Project Design Schedule, the Professional shall provide to the Owner six (6) copies of Construction Document phase plans and specifications for in-house Owner staff review and approval, at an interval of 30%, 60% and 95% completion periods.

3.2 **Final Construction Documents.** After the Professional's receipt and review of any comments from the Owner and, if applicable, the construction manager, the Professional shall prepare final Construction Documents which detail the Work within the Budgeted Total Project Construction Cost, if and as adjusted. At the time final Construction Documents are provided to the Owner for the Owner's final review, the Professional shall notify the Owner in writing of any comments of the Owner and, if applicable, the construction manager which have not been incorporated into the final Construction Documents. Final Construction Documents shall meet the criteria set forth in Subparagraphs 3.1 (i) through 3.1 (vii).

3.2.1 The Professional shall provide:

- i) signed and sealed copies required for submittal to the Building Department and the Planning/Zoning Department having jurisdiction over the project. The Owner will be provided one (1) signed and sealed hard copy for the bidding process;
- (ii) one electronically transmitted set of final Construction Documents in PDF format, two CDs each containing a copy of the final drawings and specifications in PDF format, six (6) full sized unsealed copies, and one (1) full sized hard copy, signed and sealed, to the Owner; and
- (iii) any sealed set(s) required by any governmental agency to secure necessary approvals and permits

3.2.2 The parties agree that copies of the final Construction Documents prepared by the Professional to be used by potential bidders shall not bear an original seal of the Professional.

3.3 **Final Cost Estimate.** At the time of submission of final Construction Documents to the Owner, the Professional shall also submit to the Owner the final estimate of Total Project Construction Cost.

3.4 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in Construction Documents Services are listed in Appendix 1 and Appendix B, Chapter 1, incorporated herein by reference.

#### **ARTICLE 4 PRE - CONSTRUCTION SERVICES**

4.1 **Selection Of Construction Manager.** This subsection  shall /  shall not apply to this contract. In the event the Owner elects to utilize a construction manager for the project, the Professional shall assist the Owner in the selection process. Additionally, the Professional shall collaborate with the construction manager throughout the design and document stages of the project to confirm constructability, construction document quality, and adherence to the budget. Upon completion of the construction documents, the Professional shall assist the Owner and construction manager in reviewing competitive subcontractor bids for the Project. The Professional shall obtain from the Owner the most current version of the Owner's Contract for Construction Management. The Professional shall review and familiarize itself with the Owner's contract with the construction manager and shall promptly notify the Owner of proposed modifications or additions necessitated or suggested by conditions in the Project.

4.2 **Additional Information.** The Professional shall:

- (i) review and approve or take other appropriate action on proposed substitutions and voluntary alternates, if any; and
  - (ii) prepare and distribute addenda to the Construction Documents, and otherwise assist the Owner, as required to resolve any questions arising during the bidding and negotiating process.
- 4.3 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in Pre-Construction Services are listed in Appendix 1 and Chapter 1, Appendix B, and incorporated herein by reference.

## **ARTICLE 5 CONSTRUCTION SERVICES**

- 5.1 **Administration.** The Professional shall (i) be the Owner's design representative during performance of the Work; (ii) consult and advise on all design and technical matters; (iii) if applicable, be the Owner's representative in dealing with the general contractor, from the effective date of the Contract For Construction until six (6) months from the date of achievement of Substantial Completion; and (iv) administer the Contract For Construction.
- 5.2 **Interpretations And Clarifications.** The Professional shall promptly and so as to cause no unnecessary delay, render written or graphic interpretations and decisions necessary for the proper execution of the Work. The Professional's interpretations and decisions relating to artistic effect shall be final if not inconsistent with the Contract For Construction.
- 5.3 **Submittals And Shop Drawings.** The Professional shall in not more than fourteen (14) calendar days after receipt, and in accordance with all Project schedule requirements and the general contractor's submittal schedule, review, certify, approve, reject or take other appropriate action on, and return all submittals such as shop drawings, product data and samples. The Professional shall not approve any such submittals unless such submittals conform with (i) the Project design concept; (ii) the Construction Documents; (iii) the Contract For Construction; and (iv) the Owner's Budgeted Total Project Construction Cost.
- 5.4 **Equals.** The Professional shall promptly and in accordance with all Project schedule requirements, review and approve, reject or take other appropriate action on proposed "equal materials or equipment". The Professional shall not approve any such proposed equal materials or equipment unless such equals conform to (i) the Project design concept; (ii) the Construction Documents; (iii) the Contract For Construction; and (iv) the Owner's Budgeted Total Project Construction Cost.
- 5.5 **Testing.**
- 5.5.1 The Professional shall promptly, and in accordance with all Project schedule requirements, require submission of, review and evaluate the results of all inspections, tests and written reports required by the Contract For Construction and by any governmental entity having jurisdiction over the Project. The Professional shall take appropriate action on test results, including acceptance,

rejection, requiring additional testing or corrective work, or such other action the Professional deems appropriate. The Professional shall promptly reject Work which does not conform to and comply with testing requirements.

5.5.2 The Professional, with prior consultation and approval by the Owner, shall promptly require inspection or testing of any Work in addition to that required by the Contract For Construction or governmental entities having jurisdiction over the Project when such additional inspections and testing is necessary or advisable, whether or not such Work is then fabricated, installed or completed. The Professional shall take appropriate action on all such special testing and inspection reports, including acceptance, rejection, requiring additional testing or corrective work, or such other action the Professional deems appropriate. The Professional shall promptly reject Work which does not conform to and comply with testing requirements.

5.6 **Interpretation Of Construction Documents.** The Professional shall act as initial interpreter of the requirements of the Contract For Construction and as the Owner's advisor on claims.

5.7 **Visits To The Site, Construction Observations And Rejection Of Work.**

5.7.1 The Professional shall visit the Project Site with sufficient frequency, as deemed necessary within the standard of care, to familiarize itself with the progress and quality of the Work and to observe the Work to determine general compliance of the Work with

- (i) the Contract For Construction, including approved shop drawings and other submittals;
- (ii) the Construction Schedule; and
- (iii) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.

5.7.2 The Professional shall attend monthly job site meetings with the general contractor/construction manager and other necessary parties and shall be entitled to copies of the minutes of such job site meetings once prepared by the general contractor/construction manager.

5.7.3 Each on-site construction observation shall be conducted by an experienced, qualified representative of the Professional who is knowledgeable about the Project and competent in each discipline which has trade activities in progress at the time of the inspection. Within forty-eight (48) hours after each visit, the Professional shall submit a written report to the Owner summarizing the Project status.

5.7.4 The Professional shall exercise care and diligence in discovering and reporting to the Owner in writing the results of its visit, including defects and deficiencies in the Work, and shall recommend to the Owner appropriate courses of action, if

any.

5.7.5 The Professional shall promptly disapprove or reject Work which, in the Professional's opinion, does not comply with:

- (i) the Contract For Construction including approved shop drawings and other submittals; or
- (ii) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.

5.7.6 The Professional shall immediately notify the Owner and the general contractor/construction manager in writing when it has disapproved or rejected any Work.

**5.8 Minor Changes, Change Order Requests And Change Orders.**

5.8.1 The Professional, without the Owner's prior approval, may authorize or direct minor changes in the Work which are consistent with the intent of the Construction Documents and which do not involve a change in Project cost, time for construction, Project scope, aesthetics, visual concepts or approved design elements. Any such minor changes shall be implemented by written field order. Except as provided in this subparagraph, the Professional shall not have authority to direct or authorize changes in the Work without the Owner's prior written approval; however, the Professional shall provide a contemporaneous copy of any written field order to the Owner.

5.8.2 The Professional shall promptly consult with and advise the Owner concerning, all change order requests and change orders on behalf of the Owner, and shall promptly prepare and submit change order requests for the Owner's approval and acceptance.

5.8.3 The Professional shall promptly prepare required drawings, specifications and other supporting data as necessary in connection with minor changes, change order requests and change orders.

5.8.4 In the event a change order request is approved by the Owner in the absence of an agreement with the general contractor/construction manager as to cost, time, or both, the Professional shall:

- (i) receive and maintain all documentation pertaining thereto required of the general contractor/construction manager;
- (ii) examine such documentation on the Owner's behalf;
- (iii) take such other action as may be reasonably necessary or as the Owner may request; and
- (iv) make a written recommendation to the Owner concerning any appropriate adjustment in the construction cost or time and issue a change order for

approval by the Owner.

5.8.5 The Professional shall administer and manage all minor changes, change order requests and change orders.

## **5.9 Application For Payment From General Contractor/Construction Manager.**

5.9.1 The Professional shall review applications for payment, including such accompanying data, information and schedules as the Professional requires, to determine the amounts due and, based upon such review, together with its observation of the Work, shall authorize payment by the Owner to the general contractor/construction manager in writing. Such authorization shall constitute the Professional's representation to the Owner that, to the Professional's knowledge and belief:

- (i) the Work described in the invoice has progressed to the level indicated and has been performed in accordance with the Contract For Construction;
- (ii) all necessary and appropriate lien waivers have been submitted; and
- (iii) the amount requested is currently due and owing to the general contractor/construction manager.

5.9.2 In the case of unit-price work, the Professional's recommendations for payment will constitute a final determination of quantities and classifications of such work.

5.10 **Liens.** The Professional shall promptly notify the Owner in writing of any information it obtains pertaining to any claim or alleged claim, including but not limited to mechanics' liens, construction liens, and builder's trust fund claims, or similar claims, involving any Project builder, supplier, contractor, or subcontractor relating to the Project.

## **5.11 Substantial Completion.**

5.11.1 When the general contractor/construction manager believes that the Work is substantially complete, it will notify the Owner and the Professional that the Work is ready for inspection. Upon receipt of such notification, the Professional shall coordinate with the Owner and the general contractor/construction manager a date for the inspection.

5.11.2 At or prior to the inspection, the general contractor/construction manager will prepare and furnish to the Professional a Declaration of Substantial Completion which the Professional shall review for completeness. At a minimum, the Declaration of Substantial Completion must:

- (i) contain a blank for entry of the date of Substantial Completion, which date fixes the commencement date of warranties and guaranties and allocates between the Owner and the general contractor/construction manager responsibility for security, utilities, damage to the Work and insurance;
- (ii) include a list of items to be completed or corrected and state the time

within which the general contractor/construction manager will complete or correct listed items; and

- (iii) contain signature lines for the Owner, the general contractor/construction manager and the Professional.

5.11.3 At the substantial completion inspection, the Professional shall

- (i) inspect the Work;
- (ii) add to the punch list any other items to be completed or corrected; and
- (iii) determine, in consultation with the Owner, whether the Work is substantially complete.

If the Work is not substantially complete, the process shall be repeated until the Work is substantially complete. When the Owner, the general contractor/construction manager and the Professional agree that the work is substantially complete, they shall each sign the Declaration of Substantial Completion.

5.11.4 Within the time stated for completion or correction of the list of items included with the Declaration of Substantial Completion, the Professional shall:

- (i) secure from the general contractor/construction manager all keys, manuals, required maintenance stocks, guaranties, warranties, affidavits, releases, bonds, waivers, permits, as-built and record drawings and markups, and other documents necessary for close-out of the Work, including the Certificate of Occupancy;
- (ii) obtain, review and determine the propriety of all close-out documents, and shall immediately inform the general contractor/construction manager about any deficiencies; and
- (iii) meet with the Owner's maintenance staff to familiarize and train them with respect to maintenance and use of the Project.

## 5.12 Final Completion.

5.12.1 When the general contractor/construction manager believes that the Work is finally complete, the general contractor/construction manager will notify the Owner and the Professional that the Work is ready for final inspection. Upon receipt of such notification, the Professional shall coordinate with the Owner and the general contractor/construction manager a date for the inspection.

5.12.2 At or prior to the inspection, the general contractor/construction manager will prepare and furnish to the Professional:

- (i) certification that all obligations for payment for labor, materials or equipment related to the Work have been paid or otherwise satisfied;



- (ii) certification that all insurance required of the general contractor/construction manager beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to the Owner;
- (iii) the written consent of the surety(ies), if any, to final payment; and
- (iv) full waivers of mechanics or construction liens, releases of builder's trust fund or similar claims, and release of security interests or encumbrances on the Project property.

The Professional shall review and determine the propriety of all Final Completion documents, and shall immediately inform the general contractor/construction manager about any deficiencies.

5.12.3 At the Final Completion inspection, the Professional shall:

- (i) inspect the Work;
- (ii) determine whether the general contractor/construction manager has satisfactorily completed or corrected all items on the list included with the Declaration of Substantial Completion;
- (iii) determine whether the Work complies with (a) the Contract For Construction, (b) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project, and (c) applicable installation and workmanship standards;
- (iv) determine whether required inspections and approvals by the official(s) having jurisdiction over the Project have been satisfactorily completed; and
- (v) determine, in consultation with the Owner, whether the Work is finally complete.

5.12.4 If the Work is not finally complete, the process shall be repeated until the Work is finally complete.

### 5.13 **Certification Of Final Payment To General Contractor/Construction Manager.**

5.13.1 Promptly after the Work is determined to be finally complete and the Professional determines that the general contractor/construction manager has properly submitted the items referenced in Paragraph 5.12.2, the Professional shall determine whether the general contractor/construction manager is entitled to final payment and, if so, shall so certify to the Owner in writing.

5.13.2 The Professional's certification that the general contractor/construction manager is entitled to final payment constitutes the Professional's representation to the Owner that, to the Professional's knowledge and belief:

- (i) the Work complies with (a) the Contract For Construction, (b)

applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project, and (c) applicable installation and workmanship standards;

- (ii) the general contractor/construction manager has submitted proper Final Completion close-out documents;
- (iii) all mechanics' liens, construction liens, builder's trust fund claims, and similar claims have been resolved, or in the alternative, all appropriate waivers and appropriate indemnification(s) have been secured; and
- (iv) the general contractor/construction manager is entitled to final payment.

5.14 **Professional's Submittals To Owner.** The Professional shall provide to the Owner, at the time it submits a signed certificate of final payment, all Final Completion close-out documents and one set of record drawings accurately depicting all as-built construction, in the form required by the Owner, based upon the as-built and record drawings and markups submitted by the general contractor/construction manager

5.15 **Additional Or Modified Required Services:** Additional or modified required services, if any, included in Construction Services are listed in Appendix 1 and incorporated herein by reference.

## **ARTICLE 6 PROFESSIONAL'S EXTRA SERVICES**

6.1 **Initiation Of Extra Services.** The Professional shall provide such extra services as are initiated and authorized in writing by the Owner prior to performance. The services described in this Article 6 are not included in Required Services unless identified as an "Additional Required Service or Modified Required Service".

6.2 **Definition Of Extra Services.** Extra services include, but are not limited to:

- (i) services necessary to revise final Construction Documents when such revisions are required by the Owner's election to revise the scope of the Work when such revisions are not necessitated by (a) deficiencies or conflicts in, or discrepancies between, the Construction Documents; (b) the Professional's failure to perform its duties or substantially perform in accordance with the terms of this Contract For Professional Services; or (c) other acts or omissions of the Professional;
- (ii) services required in connection with replacement of Work damaged by natural catastrophe or intentional acts of parties other than the Professional or employees, agents or subcontractors of the Professional during construction;
- (iv) services for preparation for and attendance at deposition, discovery or court or other dispute resolution proceedings on behalf of the Owner, except when such proceedings involve issues of fault, neglect or alleged liability of the Professional, or its agents, employees, or consultants;

- (v) services required by any failure to adequately perform contractual responsibilities by any (i) general contractor/construction manager; (ii) any general contractor/construction manager's subcontractor(s) or supplier(s); or (iii) the Owner;
- (vi) services required by change orders initiated by the Owner, including as applicable, those services specified in Paragraph 5.9; and
- (vii) other services not included in Required Services mutually agreed to by the Owner and the Professional in writing.

6.3 Payment of the Professional for Extra Services shall be in accordance with the provisions of Chapter 1, Article 4.

**APPENDIX 1  
ADDITIONAL OR MODIFIED REQUIRED SERVICES**

GENERAL PROJECT SERVICES [¶ 1.4]

**NONE**

PRELIMINARY DESIGN SERVICES [¶ 2.5]

**NONE**

CONSTRUCTION DOCUMENTS SERVICES [¶ 3.4]

**NONE**

PRE-CONSTRUCTION SERVICES [¶ 4.6]

**NONE**

CONSTRUCTION SERVICES [¶ 5.15]

**NONE**

## **CHAPTER 3 GENERAL TERMS AND CONDITIONS**

### **ARTICLE 1 PROFESSIONAL'S GENERAL RESPONSIBILITIES**

#### **1.1 Professional's Services.**

- 1.1.1 The Professional's services consist of those services performed by the Professional, the Professional's employees, and the Professional's consultants and contractors.
- 1.1.2 The Professional, as professional advisor and consultant to the Owner for the Project, accepts and acknowledges the relationship of trust and confidence established with the Owner and covenants to furnish professional services to the Owner in an expeditious, economical and proper manner consistent with the Owner's interests and objectives.
- 1.1.3 The Professional shall determine and promptly notify the Owner in writing when extra services are necessary or desirable in connection with the Project.

#### **1.2 Professional's Performance Of Services.**

- 1.2.1 The Professional understands and acknowledges that time is of the essence in completion of the Project and the Owner will incur damages if the Project is not completed on time. The Professional shall at all times carry out its duties and responsibilities as expeditiously as reasonably possible and in accordance with the Project Design Schedule and in accordance with all applicable schedules.
- 1.2.2 The Professional shall not offer or accept any bribes or kickbacks from or to any manufacturer, consultant, trade contractor, subcontractor, supplier or any other individual or entity in connection with the Project. The Professional shall not confer on any governmental, public or quasi-public official having any authority or influence over the Project any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised.
- 1.2.3 The Professional shall not, without the express written permission of the Owner, (i) engage or recommend to the Owner engagement of any consultant, trade contractor, subcontractor or supplier to provide services on behalf of the Professional, Owner or Project in which the Professional has a direct or indirect proprietary or other pecuniary interest; or (ii) call for the use of or by exclusion require or recommend the use of products, materials, equipment, systems, processes or procedures in which the Professional or in which any consultant, trade contractor, subcontractor, or supplier of the Professional has a direct or indirect proprietary or other pecuniary interest.

- 1.2.4 The Professional shall not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Professional, for any of the foregoing purposes, be deemed the agent of the Owner.
- 1.2.5 In the event a specific project is to be funded by state or federal monies, the Professional hereby agrees to comply with all requirements of the state or federal government applicable to the use of the monies, including receiving no payment until all required forms are completed and submitted.
- 1.2.6 Professional will have no responsibility for the finding, presence of, handling or exposure of persons to hazardous materials in any form at the project site.

### 1.3 **Professional's Duties.**

- 1.3.1 The Professional shall cooperate and communicate with the Owner and all other persons or entities required for satisfactory completion of the Project.
- 1.3.2 When requested to do so by the Owner, the Professional shall process documents, and provide other reasonably required drawings, services and certifications, necessary to enable the Owner to obtain financing or insurance for the Project.
- 1.3.3 The Professional shall perform all services and prepare all documents in accordance with requirements of governmental agencies having jurisdiction over the Project and shall comply with all applicable laws, statutes, building codes, rules and regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project in effect on the date the documents are delivered to the Owner
- 1.3.4 The Professional shall provide documents to the Owner for review in accordance with schedule requirements and with sufficient lead time to allow the Owner reasonable time for review.
- 1.3.5 The Professional shall process documents and provide other reasonably required documents, services and personnel, necessary to (i) obtain construction and other required approval, permits and Certificates of Occupancy for the Project; and (ii) represent that the Professional's services and work product comply with requirements of governmental agencies having jurisdiction over the Project.
- 1.3.6 The Professional shall immediately make additions, changes and corrections to any documents prepared by the Professional necessitated by errors and omissions in the Professional's performance of its services.

### 1.4 **Professional's Personnel And Consultants.**

- 1.4.1 All services rendered by the Professional for the Project shall be performed by or under the immediate supervision of experienced professional(s) licensed and

registered in the State of Florida possessing expertise in the discipline of the service being rendered. If the Professional chooses to subcontract or affiliate with another professional entity or organization for all or any portion of the Professional's scope of services, the Professional shall subcontract with a professional firm with the requisite licensure, skill, experience and expertise to provide the required services. The Professional shall furnish professional services in accordance with the professional standards currently practiced by professional firms on projects similar in size, complexity and cost to the Project.

- 1.4.2 The Professional shall retain and compensate any consultant(s) required in connection with the Professional's performance of Required Services. The obligations of the Professional's consultant(s) shall inure to the benefit of the Owner. The Professional's agreements with its consultant(s) shall require that in the event of default under, or termination of, this Contract For Professional Services, and upon request of the Owner, the Professional's consultant(s) will perform services for the Owner.
- 1.4.3 The Professional shall be responsible for all services performed by the Professional's consultant(s) and shall require that the work of its consultants complies with all the requirements of this Contract For Professional Services. Fees for the Professional's consultant(s) are included in the Professional Contract Price.
- 1.4.4 The Professional shall name a representative (the "Professional's Representative") to serve as the Owner's primary communication contact with the Professional.

## 1.5 **Professional's Records.**

- 1.5.1 The Professional shall, concurrently with performance of its services, prepare substantiating records regarding services rendered.
- 1.5.2 The Professional shall for all services performed in connection with this Contract For Professional Services, retain in its records copies of all written communications, and any memoranda of verbal communications, related to the Project.
- 1.5.3 Unless otherwise provided, the Professional shall maintain substantiating records for five (5) years after the date of Final Completion or for any longer period of time as may be required by Florida law or good construction practice. If the Professional receives notification of a dispute or the commencement of litigation regarding the Project within this five (5) year period, the Professional shall continue to maintain all Project records until final resolution of the dispute or litigation.
- 1.5.4 Upon reasonable notice, the Professional shall make its records available during normal business hours to the Owner or its authorized representative(s). Owner and its authorized representative(s) shall be entitled to inspect, examine, review

and copy the Professional's records at the Owner's reasonable expense, within adequate work space at the Professional's facilities. Failure by the Professional to supply substantiating records shall be reason to exclude the related costs from amounts which might otherwise be payable by the Owner to the Professional pursuant to this Contract For Professional Services. **The Professional agrees and acknowledges that all records maintained by the Professional are public records, unless exempted by law, pursuant to Chapter 119, Florida Statutes, and the Professional shall permit inspection and copying of such records as set forth therein.**

## 1.6 Contamination Claim And Incident Reporting.

- 1.6.1 The Professional shall immediately notify the Owner both orally and in writing of the presence and location of any environmental contamination of the Site of which it becomes aware or reasonably should become aware, including but not limited to Hazardous Substances and petroleum releases.
- 1.6.2 The Professional shall immediately notify the Owner both orally and in writing of the details of all incidents of which it becomes aware which adversely affect or have the potential to adversely affect the quality or progress of the Work including, but not limited to, union jurisdictional disputes, accidents, damages to Work and similar significant occurrences.
- 1.6.3 The Professional shall immediately notify the Owner both orally and in writing of any claim of which it becomes aware made by anyone against the Owner, the Professional, the general contractor/construction manager, or any consultant, trade contractor, subcontractor, or supplier of any of them, with respect to the Project.

## 1.7 Changes To The Contract.

- 1.7.1 The Professional understands and agrees that the Contract For Professional Services cannot be changed except as provided herein.
- 1.7.2 No act, omission or course of dealing by the parties shall alter the requirement that modifications of the Contract For Professional Services can be accomplished only by written documents signed by the parties.
- 1.7.3 If the Professional disputes a decision (i) that a change has occurred in its scope of services; (ii) as to whether a change in its scope of services will result in adjustment of its compensation or applicable schedules; or (iii) as to the amount of any adjustment of compensation or applicable schedules, the Professional shall nevertheless continue to provide its services. However, by doing so, the Professional will not prejudice any claim that it may have with respect to that decision.



**ARTICLE 2  
OWNER'S RESPONSIBILITIES**

**2.1 Information.**

- 2.1.1 The Owner shall provide the Professional with information reasonably necessary to assist the Professional in performing its services, including, if applicable, the Site legal description and any required survey.
- 2.1.2 If the Project involves an existing structure, the Owner shall provide the Professional with available as-built and record drawings, plans, specifications and structure system information in the Owner's possession with respect to such structure.
- 2.1.3 The Owner shall provide the Professional with the Owner's pertinent Project dates and key milestone dates.
- 2.1.4 The Owner shall provide the Professional with all written and tangible material in its possession concerning conditions below ground at the Project Site.
- 2.1.5 Professional will be entitled to rely on the accuracy and completeness of the any information provided by the Owner; provided, however, that the furnishing of information by the Owner to the Professional shall not relieve the Professional of the responsibility to evaluate the information provided by the Owner and to notify the Owner in writing of any additional information needed or services required from the Owner in order for the Professional to perform its services..

**2.2 Owner's General Duties.**

- 2.2.1 The Owner shall timely compensate the Professional in accordance with Part VII, Chapter 218, Florida Statutes, known as the Florida Prompt Payment Act.
- 2.2.2 Unless otherwise required to be provided by the Professional in its scope of services, the Owner shall secure and pay for all Project testing.
- 2.2.3 The Owner shall review documents prepared by the Professional in a timely manner and in accordance with schedule requirements. Review by the Owner shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's intent. No review of such documents shall relieve the Professional of any of its responsibilities.

**2.3 Owner's Representative.** The Owner shall name a staff member to serve as the Professional's primary communication contact with the Owner.

**ARTICLE 3  
INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

- 3.1 **Nature And Use Of Information.** All information, documents, and electronic media furnished by the Owner to the Professional (i) belong to the Owner; (ii) are proprietary and confidential to the extent permitted by law; (iii) are furnished solely for use on the Owner's Project; (iv) shall be kept confidential by the Professional to the extent permitted by law; and (v) shall not be used by the Professional on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the Owner hereunder is specifically authorized in writing by the Owner in advance.
- 3.2 **Ownership Of Information.** The Owner acknowledges the Professional's construction documents are instruments of professional service. Nevertheless, the plans and specifications prepared under this Agreement shall become the property of the Owner upon completion of the work and payment in full of all monies due to the Professional hereunder.
- 3.3 **Disclosure Of Information.** The Professional shall not disclose any information it receives from the Owner to any other person or entity except to the extent necessary to allow it to perform its duties under this Contract For Professional Services.
- 3.4 **Non-Publication.** Submission or distribution of documents to meet official regulatory requirements or for other required purposes in connection with the Project is not to be construed as publication in derogation of the Owner's common law copyrights or other reserved rights.

**ARTICLE 4  
APPLICABLE LAW AND DISPUTE RESOLUTION**

- 4.1 **Applicable State Law.** This Contract For Professional Services shall be deemed to be entered into in and shall be interpreted under the laws of the State of Florida.
- 4.2 **Court Actions.** Except as expressly prohibited by law:
- (i) all legal actions hereunder shall be conducted only in state court or federal court districts where the Project is located and having subject matter jurisdiction over the matter in controversy; except that any final judgment may be enforced in other jurisdictions in any manner provided by law;
  - (ii) the choice of jurisdiction and venue described in the preceding paragraph shall be mandatory and not permissive in nature, thereby precluding the possibility of litigation or trial in any jurisdiction or venue other than that specified herein;
  - (iii) the parties waive any right to assert the doctrine of forum *non conveniens* or to object to venue; and

- (iv) the parties waive any right to a jury trial, and agree that all legal actions shall be tried, both as to factual and legal issues, only to the Court.
- 4.3 **Mutual Discussion.** In case of any dispute, claim, question, or disagreement arising from or relating to the Project or arising out of this Contract For Professional Services or the breach thereof, the parties shall first attempt resolution through mutual discussion.
- 4.4 **Facilitative Mediation.** If the parties cannot resolve any dispute, claim, question, or disagreement arising from or relating to the Project or arising out of this Contract For Professional Services or the breach thereof through mutual discussion, as a condition precedent to litigation, the parties shall in good faith participate in private, non-binding facilitative mediation seeking a just and equitable solution satisfactory to all parties.
- 4.4.1 All parties to a mediation shall promptly provide all other parties to the mediation with copies of essential documentation relevant to the support or defense of the matter being mediated.
- 4.4.2 The parties shall not be required to mediate for a period greater than ninety (90) calendar days unless otherwise agreed to in writing by the parties. The parties shall share equally any administrative costs and fees of such proceedings, but shall each be responsible for expenses otherwise incurred.
- 4.4.3 In the event that the statute of limitations would run during the required mediation period, either party may institute litigation so as to avoid the running of such statute upon the condition that such party immediately seek a stay of such litigation pending the conclusion of the mediation period.
- 4.4.4 During the course of mediation, any party to the mediation may apply for injunctive relief from any court of competent jurisdiction until the mediation period expires or the dispute is otherwise resolved.
- 4.4.5 The Owner, the Professional, the general contractor/construction manager, and any other parties involved in any way in the design or construction of the Project are bound, each to each other, by this requirement to mediate prior to commencement of any litigation, provided that they have signed this Contract For Professional Services or an agreement that incorporates this Contract For Professional Services by reference or signed any other agreement which binds them to mediate. Each such party agrees that it may be joined as an additional party to a mediation involving other parties under any such agreement. In the case where more than one mediation is begun under any such agreement and any party contends that the mediations are substantially related, the mediations may be conducted by the mediator selected in the first mediation which was commenced.
- 4.5 **Conflicting Dispute Resolution Provisions.** Neither party to this Contract For Professional Services shall enter into any contract with regard to the Project which directly or indirectly gives the right to resolve any dispute with, involving, or affecting the other to any other person or legal entity which is in conflict with the dispute resolution

procedures required by this Article.

- 4.6 **Arbitration Preclusion.** In case of a dispute relating to the Project, or arising out of this Contract For Professional Services, no party to this Contract For Professional Services shall be required to participate in or be bound by, any arbitration proceedings.

## **ARTICLE 5 TERMINATION OR SUSPENSION OF CONTRACT**

- 5.1 **Professional's Default.** If the Professional defaults by failing to substantially perform, in accordance with the terms of this Contract For Professional Services, as determined by the Owner, the Owner may give written notice to the Professional (i) terminating this Contract For Professional Services effective seven (7) calendar days from the date of notice; or (ii) setting forth the nature of the default and requesting the Professional initiate cure within seven (7) calendar days from the date of notice. At any time thereafter, if the Professional fails to initiate cure upon the request of the Owner and continue such cure until complete, the Owner may give written notice to the Professional of immediate termination. If the Owner terminates this Contract For Professional Services pursuant to this paragraph, and it is subsequently determined by a court of competent jurisdiction that the Professional was not in default, then in such event said termination shall be deemed a termination for convenience as set forth in Paragraph 5.3.
- 5.2 **Termination Or Suspension For Convenience.** The Owner may at any time give written notice to the Professional terminating this Contract For Professional Services or suspending the Project, in whole or in part, for the Owner's convenience and without cause. If the Owner suspends the Project for convenience, the Professional shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of suspension or termination.
- 5.3 **Payment In Case Of Termination.**
- 5.3.1 If the Contract For Professional Services is terminated by the Owner pursuant to Paragraph 5.1, no further payment shall be made to the Professional until completion of the Project. At such time, the Professional's compensation shall, at the Owner's option, be calculated (i) subject to the last sentence of this subparagraph, on the basis of services actually performed and expenses actually incurred prior to the effective termination date; or (ii) on the basis of the payment terms set forth elsewhere herein. In either case, the Professional's compensation shall be reduced by all costs and damages incurred by the Owner as a result of the default of the Professional.
- 5.3.2 If the Contract For Professional Services is terminated by the Owner or suspended more than three (3) months by the Owner, the Professional's compensation shall be calculated on the basis of services actually performed and expenses actually incurred prior to the effective termination or suspension date and reasonable costs associated with termination or suspension.

**ARTICLE 6  
MISCELLANEOUS PROVISIONS**

- 6.1 **Integration.** The Contract For Professional Services represents the entire and integrated agreement between the Owner and the Professional, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project. The Contract For Professional Services may be amended only by written instruments signed by both the Owner and the Professional, including by change order as authorized by the Owner's purchasing policies and procedures, and is subject to such reasonable modifications as may be required by the Owner's lender(s) or insurer(s), if any.
- 6.2 **Severability.** If any provision of the Contract For Professional Services, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions of this Contract For Professional Services shall remain valid and enforceable.
- 6.3 **Waiver.** No provision of this Contract For Professional Services may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Contract For Professional Services.
- 6.4 **Strict Compliance.** No failure of the Owner to insist upon strict compliance by the Professional with any provision of this Contract For Professional Services shall operate to release, discharge, modify, change or affect any of the Professional's obligations.
- 6.5 **Third-Party Beneficiaries.** This Contract For Professional Services shall inure solely to the benefit of the parties hereto and their successors and assigns, and, except as provided in Subparagraph 1.4.2, nothing contained in this Contract For Professional Services is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third party against either the Owner or the Professional.
- 6.6 **Survival.** All provisions of this Contract For Professional Services which contain continuing obligations shall survive its expiration or termination.
- 6.7 **Assignment.** Neither party shall assign any or all of its benefits or executory obligations under this Contract For Professional Services without the approval of the other party, except in case of assignment solely for security or assignment by the Owner to a Related Party of the Owner. The Owner and the Professional bind their successors and assigns to the other party to this Contract For Professional Services.
- 6.8 **Truth in Negotiation Certificate.** Pursuant to Section 287.055(5)(a), Florida Statutes, for all lump-sum or cost-plus fixed fee agreements exceeding \$150,000, the firm awarded the agreement must execute a truth in negotiation certificate stating that the wage rates and other factual unit costs are accurate, complete and current, at the time of contracting. Any agreement requiring this certificate shall contain a provision that the original agreement price and any additions shall be adjusted to exclude any significant

sums by which the Owner determines the agreement price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such agreement adjustments shall be made within one (1) year following the end of the contract. Execution of this Agreement constitutes execution of the Truth in Negotiation Certificate.

- 6.9 **Public Entity Crimes.** A person or affiliate who has been placed on the convicted vendor list following a conviction of a public entity crime may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of the threshold amount provided in Florida Statutes, section 287.017 for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.
- 6.10 **Prohibition Against Contingent Fees.** Pursuant to Section 287.055(6), Florida Statutes, Professional warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the Professional to solicit or secure this Agreement and that they have not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Professional, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement.
- 6.11 **Non-Discrimination.** During the term of this Agreement Professional assures Owner that it is in compliance with Title VII of the 1964 Civil Rights Act, as amended, and the Florida Civil Rights Act of 1992, in that Professional does not on the grounds of race, color, national origin, religion, sex, age, disability or marital status, discrimination in any form or manner against Professional employees or applicants for employment. Professional understands and agrees that this Agreement is conditioned upon the veracity of this statement of assurance.
- 6.12 **Invalidity of Provisions.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

## **ARTICLE 7 DAMAGES AND REMEDIES**

- 7.1 **Services, Reimbursement And Deductions.** If the Professional fails to perform its duties the Professional shall, without compensation by the Owner, provide and process all documents, and provide other services, required as a result of the Professional's failure to perform; and shall promptly reimburse the Owner for any costs or damages incurred by the Owner. The Owner shall also have the right to deduct from payments to the Professional any costs or damages incurred, or which may be incurred, by the Owner as a result of the Professional's failure to perform.
- 7.2 **General Indemnity.** The Professional shall indemnify and hold the Owner and its agents, officers, commissioners or employees harmless for any damages resulting from failure of the Professional to take out and maintain the above insurance. Additionally, in

accordance with Section 725.08, Florida Statutes, the Professional agrees for good and valuable consideration in the amount of ten dollars (\$10.00) to indemnify, and hold the Board of County Commissioners, Lake County, Florida, and its officers, commissions, and employees free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities to the extent resulting from the negligent act, error or omission of the Professional, its agents, employees or representative, in the performance of Professional's duties set forth in this Agreement.

- 7.3 **Intellectual Property Indemnity.** To the fullest extent permitted by law, the Professional shall defend, protect, hold harmless, and indemnify the Owner and the Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Owner in writing. If the Professional has reason to believe the use of a required design, process or product is an infringement of a patent, the Professional shall be responsible for such loss unless such information is promptly given to the Owner.
- 7.4 **Non-Exclusivity Of Owner's Remedies.** The Owner's selection of one or more remedies for breach of this Contract For Professional Services shall not limit the Owner's right to invoke any other remedy available to the Owner under this Contract For Professional Services or by law.
- 7.5 **Waiver Of Damages.** The Professional shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.

## ARTICLE 8 PAYMENT TO PROFESSIONAL

- 8.1 **General Invoicing Requirements.** Every thirty (30) calendar days during the term of this Contract For Professional Services, the Professional shall submit invoices to the Owner requesting payment. Each invoice shall contain the Owner's Project identification, bear the signature of the Professional and have attached such documentation as may be required by the Owner. Final invoices must be submitted within ninety (90) days after project completion to insure final payment.
- 8.1.1 The invoice shall generally itemize or show a breakdown of the various phases or parts of the Professional Contract Price, the value of the various phases or parts, the previously invoiced and approved amounts for payment, and the amount of the current invoice.
- 8.1.2 The invoice shall also include a certification signed by the Professional stating that the Professional has paid its consultants, subcontractors and suppliers their proportional share of all previous payments received from the Owner.

8.1.3 The signature of the Professional on any invoice shall constitute the Professional's certification to the Owner that (i) the Professional has billed the Owner for all services rendered by it and any of the Professional's Consultants and subcontractors through the date of the invoice; (ii) as of the date of the invoice, no other outstanding amounts are due from the Owner to the Professional for services rendered; (iii) the services listed in the invoice have progressed to the level indicated and have been performed as required by the Contract Documents; (iv) that the reimbursable expenses have been reasonably incurred; and (v) that the amount requested is currently due and owing.

8.1.4 By acceptance of the Owner's payment of an invoiced amount, the Professional releases the Owner from any and all claims by the Professional and by Professional's Consultants and subcontractors for Work performed but not invoiced during the period for which payment was received.

8.2 **Invoicing Pursuant To Compensation Schedule And Invoicing For Payment Of A Fixed Fee.** With respect to requests for payment of the Professional Contract Price pursuant to a lump sum fixed fee, the invoice shall, in addition to the invoice requirements contained in Paragraph 8.1 above, at a minimum:

- (i) state the total fee and expenses amount; and
- (ii) state the amount due pursuant to the Compensation Schedule.

8.3 **Invoicing And Payment Of Expenses.** Invoices for expenses shall , in addition to the invoice requirements contained in Paragraph 8.1 above, be accompanied by such documentation or support data as the Owner may require. The Professional shall:

- (i) be reimbursed only for the following expenses:
  - (a) travel expenses approved in advance by the Owner in writing;
  - (b) telephone, facsimile, telecopier, postage/express mail charges, and similar communications charges;
  - (c) reproduction and copying expenses, for items in excess of those included in Required Services; and
  - (d) items approved in advance by the Owner in writing.
- (ii) set forth with particularity on its invoice the nature and cost of the expense item being billed, and attach to its invoice the written authorization, if any, required for such item; and
- (iii) bill expenses at actual cost or the rate established between the parties and without addition of administrative charge, multiple or surcharge.



- 8.4 **Time For Payment.** Payment shall be made in accordance with the Florida Prompt Payment Act, Article VII, Chapter 218, Florida Statutes.
- 8.5 **Correction Of Past Payments.** All prior payments, whether based on estimates or otherwise, may be corrected and adjusted in any payment and shall be corrected and adjusted in the final payment. In the event that any invoice contains a defect or impropriety which would prevent payment by the Payment Date, the Owner shall notify the Professional in writing of such defect or impropriety. Any disputed amounts determined by the Owner to be payable to the Professional shall be due thirty (30) calendar days from the date the dispute is resolved.
- 8.6 **Periodic Payments.** The Owner shall make payments to the Professional during each phase of the services based on the value of the services completed by the Professional on that phase. Each such payment shall be based on the Owner's opinion of the value of the services completed as of the date of the invoice. The Professional may invoice the Owner when the submittal for a particular design phase is complete. The Owner shall make payment of a cumulative amount of not more than 95% of the value of that phase. The Professional may invoice the Owner for the remaining 5% (balance of the value of that phase) when the submittal has been reviewed and approved.

## ARTICLE 9 GENERAL INSURANCE REQUIREMENTS

- 9.1 **General Insurance Requirements.** Unless otherwise required, each insurance policy except the Professional's professional liability policy:
- (i) shall be issued by an insurance carrier acceptable to Owner;
  - (ii) shall be kept in force throughout performance of the Professional's services and for one (1) year after the end of such performance;
  - (iii) shall be an occurrence policy; and
  - (iv) shall be evidenced by a certificate of insurance acceptable to the Owner which provides that the coverage evidenced thereby shall not be substantially modified or canceled without thirty (30) days' prior written notice to the Owner.
- 9.2 **Professional Liability Insurance Requirements.** The Professional's professional liability policy:
- (i) shall be issued by an insurance carrier acceptable to the Owner;
  - (ii) shall be kept in force throughout performance of the Professional's services and for five (5) years after the end of such performance;
  - (iii) may be a claims-made policy; and

- (iv) shall be evidenced by a certificate of insurance acceptable to the Owner which provides that the coverage evidenced thereby shall not be substantially modified or canceled without thirty (30) days' prior written notice to the Owner.

If any professional liability is canceled or not renewed, any substitute policy shall have a commencement date retroactive to the date upon which the Professional commenced performance of its services under this Contract For Professional Services.

- 9.3 **Certificates Of Insurance.** Prior to performance of services on the Project, the Professional shall ensure that its required insurance coverage, and that of its consultants is in effect pursuant to this Contract For Professional Services. The Professional agrees that the Owner shall have no responsibility to verify compliance by the Professional or its consultants, contractors, subcontractors or suppliers with any insurance requirements. Upon the request of the Owner, the Professional shall deliver to the Owner certificates of insurance or copies of policies for all required insurance coverage.
- 9.4 **Effect Of Insurance.** Compliance with insurance requirements shall not relieve the Professional of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of this Contract For Professional Services and the Owner shall be entitled to pursue any remedy in law or equity if the Professional fails to comply with the contractual provisions of this Contract For Professional Services. Indemnity obligations specified elsewhere in this Contract For Professional Services shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.
- 9.5 **Priority.** Insurance coverage (including any deductible or self-insured retention) required from persons or entities other than the Owner or the Owner's Related Parties shall be deemed primary to any coverage provided by the Owner or the Owner's Related Parties.
- 9.6 **Property Damage Disclaimer.** The Owner shall not be liable, and shall provide no insurance, for any loss or damage incurred by the Professional or its consultants, or by their agents and employees, to tools, machinery, equipment and other property owned by them, regardless of whether such losses are insured by them. The Professional hereby releases and discharges the Owner and its Related Parties of and from all liability to the Professional, and to anyone claiming by, through or under the Professional, by subrogation or otherwise, on account of any loss or damage to such tools, machinery, equipment or other property, however caused.

## ARTICLE 10 DEFINITIONS

When one of the following capitalized words, terms or phrases is used in this contract, it shall be interpreted or construed first as defined below, second according to its generally-accepted meaning in the construction industry, and third according to its common and customary usage.

**Budgeted Total Project Construction Cost.** The budget for the project established by the Owner.

**Construction Contract Price:** The dollar amount for which a general contractor/construction manager agrees to perform the Work set forth in a Contract For Construction.

**Construction Documents:** Plans, specifications, change orders, revisions, addenda, and other information which set forth in detail the Work.

**Construction Schedule:** The timetable which sets forth pertinent dates for timely completion of the Work.

**Contract For Construction:** A written agreement between the Owner and a general contractor/construction manager for provision of goods, products, materials, equipment, systems, management, supervision, labor and services required to construct all or part of a Project.

**Contract For Professional Services:** A written agreement between the Owner and a Professional for provision of services and related items required to design or engineer all or part of a Project.

**Declaration Of Substantial Completion:** Document declaring the Work substantially complete and suitable for occupancy or beneficial use by the Owner.

**Final Completion:** The stage of construction when the Work has been completed in accordance with the Contract For Construction and the Owner has received all documents and items necessary for closeout of the Work.

**Hazardous Substances:** The term "Hazardous Substance" shall have the same meaning and definition as set forth in the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 U.S.C. § 6901 *et seq*, and regulations promulgated thereunder (collectively "CERCLA") and any corresponding state or local law or regulation, and shall also include: (i) any Pollutant or Contaminant as those terms are defined in CERCLA; (ii) any Solid Waste or Hazardous Constituent as those terms are defined by, or are otherwise identified by, the Resource Conservation and Recovery Act as amended, 42 U.S.C. § 6901 *et seq*, and regulations promulgated thereunder (collectively "RCRA") and any corresponding state or local law or regulation; (iii) crude oil, petroleum and fractions of distillates thereof; (iv) any other material, substance or chemical defined, characterized or regulated as toxic or hazardous under any applicable law, regulation, ordinance, directive or ruling; and (v) any infectious or medical waste as defined by any applicable federal or state laws or regulations.

**Owner's Related Parties:** Any parent, subsidiary or affiliated entities of the Owner, including the respective officers, trustees, office holders, directors, shareholders, partners, and employees of each.

**Professional:** An entity, including but not limited to an architect, engineer or specialty consultant, engaged directly by the Owner to provide design or engineering services.

**Project:** A planned construction undertaking as more specifically described immediately preceding the recitals in Chapter 1 of a Contract For Professional Services or in a Contract For Construction.

**Project Design Schedule:** The timetable which sets forth the required relationships between, and pertinent dates for, required completion of design and engineering services, documents and related activities.

**Site:** The geographical location of a Project, usually defined by legal boundary lines, and the location characteristics including, but not limited to, grades and lines of streets, alleys, pavements and adjoining structures, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, existing buildings and improvements, and service and utility lines.

**Substantial Completion:** The stage of construction when the Owner can occupy or beneficially use satisfactorily completed Work for its intended purpose.

**Total Project Construction Cost:** The total cost to the Owner to complete construction of the Project, including, without limitation, the Work, the cost of utilities, the cost of fees for permits and licenses, and modifications necessitated by local conditions.

**Work:** Any and all computers, construction machinery, documents, equipment, facilities, fixtures, furnishings, goods, heat, items, labor, licenses, management, materials, permits, products, services, supervision, supplies, systems, taxes, testing, tools, utilities, transportation, vehicles, and water, required to be performed or supplied and/or necessary for proper execution and completion of the Project, or some portion thereof, whether or not incorporated or to be incorporated into the Project; provided, however, that Work does not include performance of pre-construction services by a Construction Manager.