

**Southern Humboldt Community Healthcare District
DESIGN SERVICES AGREEMENT**

1. PARTIES AND DATE.

This Agreement is made and entered into as [REDACTED], 20[REDACTED] by and between the Southern Humboldt Community Healthcare District, a public agency organized and operating under the laws of the State of California with its principal place of business at 733 Cedar Street, Garberville, CA 95542 ("District"), and [***INSERT NAME***], a [***INSERT TYPE OF ENTITY - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY***] with its principal place of business at [***INSERT ADDRESS***] (hereinafter referred to as "Designer"). District and Designer are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 District. District is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Designer. Designer desires to perform and assume responsibility for the provision of certain professional design services required by the District on the terms and conditions set forth in this Agreement. Designer warrants that it is fully licensed, qualified, and willing to perform the services required by this Agreement; provided, however, that if Designer is a corporation or other organization, the Project Designer designated pursuant to Section 3.2, and not the Designer itself, shall be fully licensed to practice as an architect and/or engineer in the State of California.

2.3 Project. District desires to engage Designer to render such services for the [INSERT PROJECT NAME] ("Project") as set forth in this Agreement.

3. TERMS

3.1 Employment of Designer.

3.1.1 Scope of Services. Designer promises and agrees to furnish to District all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional design and related services necessary for the full and adequate completion of the Project consistent with the provisions of this Agreement (hereinafter referred to as "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. All Services performed by Designer shall be subject to the sole and discretionary approval of the District, which approval shall not be unreasonably withheld. Additionally, Designer shall comply with all Federal requirements applicable to the Services as set forth in Exhibit "D".

3.1.2 Term. The term of this Agreement shall be from [INSERT DATE] to [INSERT DATE], unless earlier terminated as provided herein. [***INSERT THE FOLLOWING SENTENCE FOR MULTI-YEAR, AUTOMATIC RENEWAL NOT TO EXCEED THREE CONSECUTIVE YEARS; OTHERWISE, ALWAYS DELETE: The District shall have the unilateral option, at its sole discretion, to renew this Agreement for no more than [INSERT

NUMBER] additional one-year terms.***] Designer shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Project Designer; Key Personnel.

3.2.1 Project Designer. Designer shall name a specific individual to act as Project Designer, subject to the approval of District. Designer hereby designates **[INSERT NAME OF INDIVIDUAL DESIGNER]** (License No. **[INSERT NUMBER]**) to act as the Project Designer for the Project. The Project Designer shall: (1) maintain oversight of the Services; (2) have full authority to represent and act on behalf of the Designer for all purposes under this Agreement; (3) supervise and direct the Services using his or her best skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) adequately coordinate all portions of the Services; and (6) act as principal contact with District and all contractors, consultants, engineers and inspectors on the Project. Any change in the Project Designer shall be subject to the District's prior written approval, which approval shall not be unreasonably withheld. The new Project Designer shall be of at least equal competence as the prior Project Designer. In the event that District and Designer cannot agree as to the substitution of a new Project Designer, District shall be entitled to terminate this Agreement for cause.

3.2.2 Key Personnel. In addition to the Project Designer, Designer has represented to the District that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become unavailable, Designer may substitute others of at least equal competence upon written approval of the District. In the event that District and Designer cannot agree as to the substitution of key personnel, engineers or consultants, District shall be entitled to terminate this Agreement for cause. As discussed below, any personnel, engineers or consultants who fail or refuse to perform the Services in a manner acceptable to the District, or who are determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Designer at the request of the District. The key additional personnel, engineers and consultants for performance of this Agreement are as follows: **[INSERT NAMES, AND TITLES OF KEY PERSONNEL, AND LICENSE NUMBERS, IF APPLICABLE]**.

3.3 Hiring of Designers and Personnel.

3.3.1 Right to Hire or Employ. Designer shall have the option, unless District objects in writing after notice, to employ at its expense architects, engineers, experts or other consultants qualified and licensed to render services in connection with the planning and/or administration of the Project, and to delegate to them such duties as Designer may delegate without relieving Designer from administrative or other responsibility under this Agreement. Designer shall be responsible for the coordination and cooperation of Designer's architects, engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by District in its sole and reasonable discretion. Designer shall notify District of the identity of all consultants at least fourteen (14) days prior to their commencement of work to allow District to review their qualifications and approve to their participation on the Project in its sole and reasonable discretion.

3.3.2 Qualification and License. All architects, engineers, experts and other consultants retained by Designer in performance of this Agreement shall be qualified to perform

the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

3.3.3 Standards and Insurance. All architects, engineers, experts and other consultants hired by Designer shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the District in writing. Unless changes are approved in writing by the District, Designer's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.3.4 Assignments or Staff Changes. Designer shall promptly obtain written District approval of any assignment, reassignment or replacement of such architects, engineers, experts and consultants, or of other staff changes of key personnel working on the Project. As provided in the Agreement, any changes in Designer's consultants and key personnel shall be subject to approval by District.

3.3.5 Draftsman and Clerical Support. Draftsmen and clerical personnel shall be retained by Designer at Designer's sole expense.

3.4 Standard of Care.

3.4.1 Standard of Care. Designer shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform the Services in the same discipline in the State of California, and shall be responsible to District for damages sustained by the District and delays to the Project as specified in the indemnification provision of this Agreement. Without limiting the foregoing, Designer shall be fully responsible to the District for any increased costs incurred by the District as a result of any such delays in the design or construction of the Project. Designer represents and maintains that it is skilled in the professional calling necessary to perform the Services. Designer warrants and represents that all of its employees, architects, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Designer represents that it, its employees, architects, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Designer shall perform, at its own cost and expense and without reimbursement from the District, any services necessary to correct errors or omissions which are caused by the Designer's failure to comply with the standard of care provided for herein.

3.4.2 Performance of Employees. Any employee or consultant who is determined by the District to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or consultant who fails or refuses to perform the Services in a manner acceptable to the District, shall be promptly removed from the Project by the Designer and shall not be re-employed to perform any of the Services or to work on the Project.

3.5 Laws and Regulations.

3.5.1 Knowledge and Compliance. Designer shall keep itself fully informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any

manner affecting the performance of the Services or the Project, and shall give all notices required of the Designer by law. Designer shall be liable, pursuant to the standard of care and indemnification provisions of this Agreement, for all violations of such laws and regulations in connection with its Services. If the Designer performs any work knowing it to be contrary to such laws, rules and regulations, Designer shall be solely responsible for all costs arising therefrom. Designer shall defend, indemnify and hold District, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.5.2 Drawings and Specifications. Designer shall cause all drawings and specifications to conform to any applicable requirements of federal, state and local laws, rules and regulations, including the Uniform Building Code, in effect as of the time the drawings and specifications are prepared or revised during the latest phase of the Services described in Exhibit "A" attached hereto. Any significant revisions made necessary by changes in such laws, rules and regulations after this time may be compensated as Additional Services which were not known or reasonably should not have been known by Designer. Designer shall cause the necessary copies of such drawings and specifications to be filed with any governmental bodies with approval jurisdiction over the Project, in accordance with the Services described in Exhibit "A" attached hereto. For the preparation of all such drawings and specifications, the Designer shall use Computer Aided Design Drafting ("CADD") (e.g., AutoCAD) or other technology acceptable to the Designer and District.

3.5.3 Americans with Disabilities Act. Designer will use its best professional efforts to interpret all applicable federal, state and local laws, rules and regulations with respect to access, including those of the Americans with Disabilities Act ("ADA"). Designer shall inform District of the existence of inconsistencies of which it is aware or reasonably should be aware between federal and state accessibility laws, rules and regulations, as well as any other issues which are subject to conflicting interpretations of the law, and shall provide the District with its interpretation of such inconsistencies and conflicting interpretations. Unless Designer brings such inconsistencies and conflicting interpretations to the attention of the District and requests District's direction on how to proceed, the Designer's interpretation of such inconsistencies and conflicting interpretations shall be the sole responsibility and liability of Designer, and the Designer shall correct all plans, specifications and other documents prepared for the Project at no additional cost if its interpretations are shown to be incorrect. In the event that the Designer request's District's direction on how to proceed with respect to any inconsistent and/or conflicting interpretation, the Designer shall be responsible to the District only pursuant to the indemnification provisions of this Agreement.

3.5.4 Permits, Approvals and Authorizations. Designer shall provide District with a list of all permits, approvals or other authorizations required for the Project from all federal, state or local governmental bodies with approval jurisdiction over the Project. Designer shall then assist the District in obtaining all such permits, approvals and other authorizations. The costs of such permits, approvals and other authorizations shall be paid by the District.

3.5.5 Water Quality Management and Compliance.

(a) Compliance with Water Quality Laws, Ordinances and Regulations. Designer shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the District's ordinances regulating water quality and storm water; the Federal Water

Pollution Control Act (33 U.S.C. § 1251 *et seq.*); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Designer shall additionally comply with the lawful requirements of the District, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges.

(b) Standard of Care. Designer warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies described in Sections 3.5.5(a) of this Agreement. Designer further warrants that it, its employees and subcontractors will receive adequate training, as determined by the District, regarding these requirements as they may relate to the Services.

(c) Liability for Non-compliance.

(i) Indemnity: Failure to comply with laws, regulations, and ordinances listed in Sections 3.5.5(a) of this Agreement is a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, Designer agrees to indemnify and hold harmless the District, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the District, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Services, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the District, its officials, officers, agents, employees or authorized volunteers.

(ii) Defense: District reserves the right to defend any enforcement action or civil action brought against the District for Designer's failure to comply with any applicable water quality law, regulation, or policy. Designer hereby agrees to be bound by, and to reimburse the District for the costs associated with, any settlement reached between the District and the relevant enforcement entity.

(iii) Damages: District may seek damages from Designer for delay in completing the Services caused by Designer's failure to comply with the laws, regulations and policies described in Section 3.5.5(a) of this Agreement, or any other relevant water quality law, regulation, or policy.

3.6 Independent Contractor.

3.6.1 Control and Payment of Subordinates. District retains Designer on an independent contractor basis and Designer is not an employee of District. Designer is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to District's employees. Any additional personnel performing the Services under this Agreement on behalf of Designer shall also not be employees of District, and shall at all times be under Designer's exclusive direction and control. Designer shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Designer shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.7 Schedule of Services.

3.7.1 Designer Services. Designer shall fully and adequately complete the Services described in this Agreement and in Exhibit "A" attached hereto and incorporated herein by reference.

3.7.2 Timely Performance Standard. Designer shall perform all Services hereunder as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Designer shall perform its Services so as to allow for the full and adequate completion of the Project within the time required by the District and within any completion schedules adopted for the Project. Designer agrees to coordinate with District's staff, contractors and consultants in the performance of the Services, and shall be available to District's staff, contractors and consultants at all reasonable times.

3.7.3 Performance Schedule. Designer shall prepare an estimated time schedule for the performance of Designer's Services, to be adjusted as the Project proceeds. Such schedule shall be subject to the District's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for District's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. If District and Designer cannot mutually agree on a performance schedule, District shall have the authority to immediately terminate this Agreement. The schedule shall not be exceeded by Designer without the prior written approval of District. If the Designer's Services are not completed within the time provided by the agreed upon performance schedule, or any milestones established therein, it is understood, acknowledged and agreed that the District will suffer damage for which the Designer will be responsible pursuant to the indemnification provision of this Agreement.

3.7.4 Excusable Delays. Any delays in Designer's work caused by the following shall be added to the time for completion of any obligations of Designer: (1) the actions of District or its employees; (2) the actions of those in direct contractual relationship with District; (3) the actions of any governmental agency having jurisdiction over the Project; (4) the actions of any parties not within the reasonable control of the Designer; and (5) any act of God or other unforeseen occurrence not due to any fault or negligence on the part of Designer. Neither the District nor the Designer shall be liable for damages, liquidated or otherwise, to the other on account of such delays.

3.7.5 Request for Excusable Delay Credit. The Designer shall, within fifteen (15) calendar days of the beginning of any excusable delay, notify the District in writing of the causes of delay (unless District grants in writing a further period of time to file such notice prior to the date of final payment under the Agreement). District will then ascertain the facts and the extent of the delay, and grant an extension of time for completing the Services when, in its sole judgment, the findings of fact justify such an extension. The District's findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the Services affected by the delay and shall not apply to other portions of the Services not so affected. The sole remedy of Designer for extensions of time shall be an extension of the performance time at no cost to the District. If Additional Services are required as a result of an excusable delay, the parties shall mutually agree thereto pursuant to the Additional Services provision of this Agreement. Should Designer make an application for an extension of time, Designer shall submit

evidence that the insurance policies required by this Agreement remain in effect during the requested additional period of time.

3.8 Additional Designer Services.

3.8.1 Request for Services. At District's request, Designer may be asked to perform services not otherwise included in this Agreement, not included within the basic services listed in Exhibit "A" attached hereto, and/or not customarily furnished in accordance with generally accepted design practice.

3.8.2 Definition. As used herein, "Additional Services" mean: (1) any work which is determined by District to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary for the Designer to perform at the execution of this Agreement; or (2) any work listed as Additional Services in Exhibit "A" attached hereto. Designer shall not perform, nor be compensated for, Additional Services without prior written authorization from District and without an agreement between the District and Designer as to the compensation to be paid for such services. District shall pay Designer for any approved Additional Services, pursuant to the compensation provisions herein, so long as such services are not made necessary through the fault of Designer pursuant to the indemnification provision of this Agreement.

3.8.3 Examples of Additional Services. Such Additional Services shall not include any redesign or revisions to drawings, specifications or other documents when such revisions are necessary in order to bring such documents into compliance with applicable laws, rules, regulations or codes of which Designer was aware or should have been aware pursuant to the laws and regulations provision of this Agreement above. Such Additional Services may include, but shall not be limited to:

(a) Separately Bid Portions of Project. Plan preparation and/or administration of work on portions of the Project separately bid.

(b) Furniture and Interior Design. Assistance to District, if requested, for the selection of moveable furniture, equipment or articles which are not included in the Construction Documents.

(c) Fault of Contractor. Services caused by delinquency, default or insolvency of contractor, or by major defects in the work of the contractor, provided that any such services made necessary by the failure of Designer to detect and report such matters when it reasonably should have done so shall not be compensated.

(d) Inconsistent Approvals or Instructions. Revisions in drawings, specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control of Designer.

(e) Legal Proceedings. Serving as an expert witness on District's behalf or attending legal proceedings to which the Designer is not a party.

(f) Damage Repair. Supervision of repair of damages to any structure.

(g) Extra Environmental Services. Additional work required for environmental conditions (e.g. asbestos or site conditions) not already contemplated within the Designer's services for the Project.

3.9 District Responsibilities. District's responsibilities shall include the following:

3.9.1 Data and Information. District shall make available to Designer all necessary data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and criteria. As part of the budget limitation information, the District shall provide the Designer with a preliminary construction budget ("District's Preliminary Construction Budget").

3.9.2 Project Survey. If required pursuant to the scope of the Project and if requested by Designer, District shall furnish Designer with, or direct Designer to procure at District's expense, a survey of the Project site prepared by a registered surveyor or civil engineer, any other record documents which shall indicate existing structures, land features, improvements, sewer, water, gas, electrical and utility lines, topographical information and boundary dimensions of the site, and any other such pertinent information.

3.9.3 Bid Phase. Distribute Construction Documents to bidders and conduct the opening and review of bids for the Project.

3.9.4 Testing. Retain consultant(s) to conduct chemical, mechanical, soils, geological or other tests required for proper design of the Project, and furnish such surveys, borings, test pits, and other tests as may be necessary to reveal conditions of the site which must be known to determine soil condition or to ensure the proper development of the required drawings and specifications.

3.9.5 Required Inspections and Tests. Retain consultant(s) to conduct materials testing and inspection or environmental/hazardous materials testing and inspection pursuant to any applicable laws, rules or regulations.

3.9.6 Fees of Reviewing or Licensing Agencies. Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having approval jurisdiction over the Project.

3.9.7 District's Representative. The District hereby designates the District Chief Executive Officer, or his or her designee, to act as its representative for the performance of this Agreement ("District's Representative"). District's Representative shall have the power to act on behalf of the District for all purposes under this Contract. The District Chief Executive Officer hereby designates **[INSERT NAME AND TITLE]**, or his or her designee, as the District's contact for the implementation of the Services hereunder. Contractor shall not accept direction or orders from any person other than the District's Representative or his or her designee.

3.9.8 Review and Approved Documents. Review all documents submitted by Designer, including change orders and other matters requiring approval by the District Board of Directors or other officials. District shall advise Designer of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement above.

3.10 Compensation.

3.10.1 Designer's Compensation for Basic Services. District shall pay to Designer, for the performance of all Services rendered under this Agreement, the total not to exceed amount of **[INSERT WRITTEN AMOUNT]** Dollars (**[\$[INSERT NUMERICAL AMOUNT]**) ("Total Compensation"). This Total Compensation amount shall be based upon, and may be adjusted according to, the fee schedule and related terms and conditions attached hereto as Exhibit "B" and incorporated herein by reference. The Total Compensation, as may be adjusted upon mutual agreement, shall constitute complete and adequate payment for Services under this Agreement.

3.10.2 Payment for Additional Services. At any time during the term of this Agreement, District may request that Designer perform Additional Services. As used herein, Additional Services means any work which is determined by District to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Any additional work in excess of this amount must be approved by the District. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the parties. If District requires Designer to hire consultants to perform any Additional Services, Designer shall be compensated therefore at the rates and in the manner set forth in Exhibit "C" attached hereto and incorporated herein by reference, unless a flat rate or some other form of compensation is mutually agreed upon by the parties. District shall have the authority to review and approve the rates of any such consultants. In addition, Designer shall be reimbursed for any expenses incurred by such consultants pursuant to the terms and conditions of Section 3.10.3.

3.10.3 Reimbursable Expenses. Reimbursable expenses are in addition to compensation for the Services and Additional Services. Designer shall not be reimbursed for any expenses unless authorized in writing by District, which approval may be evidenced by inclusion in Exhibit "C" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Designer in the interest of the Project. Designer shall be required to acquire prior written consent in order to obtain reimbursement for the following: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) bid document duplication costs in excess of \$1,000; and (5) other costs, fees and expenses in excess of \$1,000.

3.10.4 Payment to Designer. Designer's compensation and reimbursable expenses shall be paid by District to Designer no more often than monthly. Such periodic payments shall be made based upon the percentage of work completed, and in accordance with the phasing and funding schedule provided in Exhibit "B" and the compensation rates indicated in Exhibit "C" attached hereto and incorporated herein by reference. In order to receive payment, Designer shall present to District an itemized statement which indicates Services performed, percentage of Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement, as well as those expenses for which reimbursement is requested for that statement period. The amount paid to Designer shall never exceed the percentage amounts authorized by the phasing and funding schedule located in Exhibit "B" attached hereto. District shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the parties in a mutually agreeable manner.

Payments made for Additional Services shall be made in installments, not more often than monthly, proportionate to the degree of completion of such services or in such other manner as the parties shall specify when such services are agreed upon, and in accordance with any authorized fee or rate schedule. In order to receive payment, Designer shall present to District an itemized statement which indicates the Additional Services performed, percentage of Additional Services completed, method for computing the amount payable, and the amount to be paid. The statement shall describe the amount of Additional Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. District shall, within thirty (30) days of receiving such statement, review the statement and pay all approved charges thereon pursuant to the provisions of Civil Code Section 3320. Disputed amounts shall be resolved by the parties in a mutually agreeable manner.

Upon cancellation or termination of this Agreement, Designer shall be compensated as set forth in the termination provision herein.

3.10.5 Withholding Payment to Designer. The District may withhold payment, in whole or in part, to the extent reasonably necessary to protect the District from claims, demands, causes of action, costs, expenses, liabilities, losses, damages, or injuries of any kind to the extent arising out of or caused by the negligence, recklessness, or willful misconduct protected under the indemnification provisions of this Agreement. Failure by District to deduct any sums from a progress payment shall not constitute a waiver of the District's right to such sums. The District may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages as determined by the District, incurred by the District for which Designer is liable under the Agreement or state law. Payments to the Designer for compensation and reimbursable expenses due shall not be contingent on the construction, completion or ultimate success of the Project. Payment to the Designer shall not be withheld, postponed, or made contingent upon receipt by the District of offsetting reimbursement or credit from parties not within the Designer's reasonable control.

3.10.6 Prevailing Wages. Designer is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Designer agrees to fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws. District shall provide Designer with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Designer shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Designer's principal place of business and at the Project site. Designer shall defend, indemnify and hold the District, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure of the Designer or its consultants to comply with the Prevailing Wage Laws. It shall be mandatory upon the Designer and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor

Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3.10.7 Registration. If the Services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Designer and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Designer shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

3.10.8 Labor Compliance. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Designer’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Designer or any subcontractor that affect Designer’s performance of Services, including any delay, shall be Designer’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Designer caused delay and shall not be compensable by the District. Designer shall defend, indemnify and hold the District, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Designer or any subcontractor.

3.11 Notice to Proceed.

Designer shall not proceed with performance of any Services under this Agreement unless and until the District provides a written notice to proceed.

3.12 Termination, Suspension and Abandonment.

3.12.1 Grounds for Termination; Designer’s Termination for Cause. District hereby reserves the right to suspend or abandon, at any time and for any reason, all or any portion of the Project and the construction work thereon, or to terminate this Agreement at any time with or without cause. Designer shall be provided with at least seven (7) days advanced written notice of such suspension, abandonment or termination. In the event of such suspension, abandonment or termination, Designer shall be paid for Services and reimbursable expenses rendered up to the date of such suspension, abandonment or termination, pursuant to the schedule of payments provided for in this Agreement, less any claims against or damages suffered by District as a result of the default, if any, by Designer. Designer hereby expressly waives any and all claims for damages or compensation arising under this Agreement, except as set forth herein, in the event of such suspension, abandonment or termination. Designer may terminate this Agreement for substantial breach of performance by the District such as failure to make payment to Designer as provided in this Agreement.

3.12.2 District’s Suspension of Work. If Designer’s Services are suspended by District, District may require Designer to resume such Services within ninety (90) days after written notice from District. When the Project is resumed, the Total Compensation and schedule of Services shall be equitably adjusted upon mutual agreement of the District and Designer.

3.12.3 Documents and Other Data. Upon suspension, abandonment or termination, Designer shall provide to District all preliminary studies, sketches, working drawings,

specifications, computations, and all other Project Documents, as defined below, to which District would have been entitled at the completion of Designer's Services under this Agreement. Upon payment of the amount required to be paid to Designer pursuant to the termination provisions of this Agreement, District shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Designer under this Agreement. Designer shall make such documents available to District upon request and without additional compensation other than as may be approved as a reimbursable expense.

3.12.4 Employment of other Designers. In the event this Agreement is terminated in whole or in part as provided herein, District may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.13 Ownership and Use of Documents; Confidentiality.

3.13.1 Ownership. All plans, specifications, original or reproducible transparencies of working drawings and master plans, preliminary sketches, design presentation drawings, structural computations, estimates and any other documents prepared pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data magnetically or otherwise recorded on computer diskettes (hereinafter referred to as the "Project Documents") shall be and remain the property of District. Although the official copyright in all Project Documents shall remain with the Designer or other applicable subcontractors or consultants, the Project Documents shall be the property of District whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, Designer shall provide to District copies of all Project Documents required by District. In addition, Designer shall retain copies of all Project Documents on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to District upon the payment of reasonable duplication costs. Before destroying the Project Documents following this retention period, Designer shall make a reasonable effort to notify District and provide District with the opportunity to obtain the documents.

3.13.2 Right to Use. Designer grants to District the right to use and reuse all or part of the Project Documents, at District's sole discretion and with no additional compensation to Designer, for the following purposes:

- (a) The construction of all or part of this Project.
- (b) The repair, renovation, modernization, replacement, reconstruction or expansion of this Project at any time;
- (c) The construction of another project by or on behalf of the District for its ownership and use;

District is not bound by this Agreement to employ the services of Designer in the event such documents are used or reused for these purposes. District shall be able to use or reuse the Project Documents for these purposes without risk of liability to the Designer or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit District's right to recover for latent defects or for errors or omissions of the Designer.

Any use or reuse by District of the Project Documents on any project other than this Project without employing the services of Designer shall be at District's own risk with respect to third parties. If District uses or reuses the Project Documents on any project other than this Project, it shall remove the Designer's seal from the Project Documents and hold harmless Designer and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

3.13.3 License. This Agreement creates a non-exclusive and perpetual license for District to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. Designer shall require any and all subcontractors and consultants to agree in writing that District is granted a non-exclusive and perpetual license for the work of such subcontractors or consultants performed pursuant to this Agreement.

3.13.4 Right to License. Designer represents and warrants that Designer has the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents that Designer prepares or causes to be prepared pursuant to this Agreement. Designer shall indemnify and hold District harmless pursuant to the indemnification provisions of this Agreement for any breach of this Section. Designer makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents that were prepared by design professionals other than Designer and provided to Designer by District.

3.13.5 Confidentiality. All Project Documents, either created by or provided to Designer in connection with the performance of this Agreement, shall be held confidential by Designer to the extent they are not subject to disclosure pursuant to the Public Records Act. All Project Documents shall not, without the written consent of District, be used or reproduced by Designer for any purposes other than the performance of the Services. Designer shall not disclose, cause or facilitate the disclosure of the Project Documents to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Designer which is otherwise known to Designer or is generally known, or has become known, to the related industry shall be deemed confidential. Designer shall not use District's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the written consent of District.

3.14 Indemnification.

3.14.1 To the fullest extent permitted by law, Designer shall defend (with counsel of District's choosing), indemnify and hold the District, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Designer, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Designer's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Designer's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Designer, the District, its officials, officers, employees, agents, or volunteers.

3.14.2 If Designer's obligation to defend, indemnify, and/or hold harmless arises out of Designer's performance of "design professional" services (as that term is defined under

Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Designer's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Designer, and, upon Designer obtaining a final adjudication by a court of competent jurisdiction, Designer's liability for such claim, including the cost to defend, shall not exceed the Designer's proportionate percentage of fault.

3.15 Insurance. Designer shall not commence work under this Agreement until it has provided evidence satisfactory to the District that it has secured all insurance required under this Section. In addition, Designer shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the District that the subconsultant has secured all insurance required under this section.

3.15.1 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, Designer shall, at its expense, procure and maintain in full force and effect for the duration of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Designer agrees to amend, supplement or endorse the policies to do so.

3.15.2 Additional Insured. The District, its officials, officers, employees, agents, and volunteers shall be named as additional insureds on Designer's and its subconsultants' policies of commercial general liability and automobile liability insurance using the endorsements and forms specified herein or exact equivalents.

3.15.3 Commercial General Liability

(a) The Designer shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the District.

(b) Coverage for Commercial General Liability insurance shall be at least as broad as the following: Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent. Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Contract

(8) Broad Form Property Damage

(9) Independent Contractors Coverage

(c) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(d) The policy shall give District, the District Board of Directors and each member of the District Board of Directors, its officers, employees, agents and District designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(e) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the District, and provided that such deductibles shall not apply to the District as an additional insured.

3.15.4 Automobile Liability

(a) At all times during the performance of the work under this Agreement, the Designer shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the District.

(b) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(c) The policy shall give District, the District Board of Directors and each member of the District Board of Directors, its officers, employees, agents and District designated volunteers additional insured status.

(d) Subject to written approval by the District, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the District as an additional insured, but not a self-insured retention.

3.15.5 Workers' Compensation/Employer's Liability

(a) Designer certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(b) To the extent Designer has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Designer shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein.

Designer shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this Section.

3.15.6 Professional Liability (Errors and Omissions)

(a) At all times during the performance of the work under this Agreement the Designer shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the District and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Designer. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

3.15.7 Minimum Policy Limits Required

(a) The following insurance limits are required for the Agreement:

	<u>Combined Single Limit</u>
Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 combined single limit
Employer's Liability	\$1,000,000 per accident or disease
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)

(b) Defense costs shall be payable in addition to the limits.

(c) Requirements of specific coverage or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

3.15.8 Evidence Required

(a) Prior to execution of the Agreement, the Designer shall file with the District evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

3.15.9 Policy Provisions Required

(a) Designer shall provide the District at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Designer shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Designer shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the District at least ten (10) days prior to the effective date of cancellation or expiration.

(b) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Designer's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the District or any named insureds shall not be called upon to contribute to any loss.

(c) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Designer shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Designer shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(d) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the District, its officials, officers, employees, agents, and volunteers or shall specifically allow Designer or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Designer hereby waives its own right of recovery against District, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(e) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Designer from liability in excess of such coverage, nor shall it limit the Designer's indemnification obligations to the District and shall not preclude the District from taking such other actions available to the District under other provisions of the Agreement or law.

3.15.10 Qualifying Insurers

(a) All policies required shall be issued by acceptable insurance companies, as determined by the District, which satisfy the following minimum requirements: Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.15.11 Additional Insurance Provisions

(a) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Designer, and any approval of said insurance by the District, is not

intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Designer pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(b) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, District has the right but not the duty to obtain the insurance it deems necessary and any premium paid by District will be promptly reimbursed by Designer or District will withhold amounts sufficient to pay premium from Designer payments. In the alternative, District may cancel this Agreement.

(c) The District may require the Designer to provide complete copies of all insurance policies in effect for the duration of the Project.

(d) Neither the District nor the District Board of Directors, nor any member of the District Board of Directors, nor any of the officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

3.15.12 Subconsultant Insurance Requirements

(a) Designer shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the District that they have secured all insurance required under this Section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the District as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Designer, District may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

3.16 Records.

Designer shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Designer shall allow a representative of District during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Designer shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five (5) years from the date of final payment under this Agreement.

3.17 Standardized Manufactured Items.

Designer shall cooperate and consult with District in the use and selection of manufactured items on the Project, including but not limited to, paint, hardware, plumbing, mechanical and electrical equipment, fixtures, roofing materials and floor coverings. All such manufactured items shall be standardized to District's criteria to the extent such criteria do not interfere with building design.

3.18 Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described herein. Any additional or subsequent construction at the site of the Project, or at any other District

site, will be covered by, and be the subject of, a separate Agreement for design services between District and the designer chosen therefor by District.

3.19 Mediation.

Disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the parties.

3.20 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Designer shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of District. Any attempted assignment without such consent shall be invalid and void.

3.21 Asbestos Certification.

Designer shall certify to District, in writing and under penalty of perjury, that to the best of its knowledge, information and belief no asbestos-containing material or other material deemed to be hazardous by the state or federal government was specified as a building material in any construction document that the Designer prepares for the Project. Designer shall require all consultants who prepare any other documents for the Project to submit the same written certification. Designer shall also assist the District in ensuring that contractors provide District with certification, in writing and under penalty of perjury, that to the best of their knowledge, information and belief no material furnished, installed or incorporated into the Project contains asbestos or any other material deemed to be hazardous by the state or federal government. These certifications shall be part of the final Project submittal. Designer shall include statements in its specifications that materials containing asbestos or any other material deemed to be hazardous by the state or federal government are not to be included.

3.22 No Third Party Rights.

This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

3.23 Governing Law.

This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in Humboldt County.

3.24 Exhibits and Recitals.

All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth.

3.25 Severability.

Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

3.26 Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

3.27 Safety.

Designer shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Designer shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

3.28 Delivery of Notices.

All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

DISTRICT:

Southern Humboldt Community Healthcare District

8353 Sierra Avenue

Fontana, California 92335

Attn: *****INSERT NAME & DEPARTMENT*****

CONSULTANT:

*****INSERT NAME, ADDRESS & CONTACT PERSON*****

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.29 Time of Essence.

Time is of the essence for each and every provision of this Agreement.

3.30 District’s Right to Employ Other Designers.

District reserves right to employ other consultants, including designers, in connection with this Project or other projects.

3.31 Prohibited Interests.

3.31.1 Solicitation. Designer maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Designer, to solicit or secure this Agreement. Further, Designer warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Designer, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or

resulting from the award or making of this Agreement. For breach or violation of this warranty, District shall have the right to rescind this Agreement without liability.

3.31.2 Conflict of Interest. For the term of this Agreement, no director, official, officer or employee of District, during the term of his or her service with District, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.32 Equal Opportunity Employment.

Designer represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or any other classification protected by federal or state law. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Designer shall also comply with all relevant provisions of District's minority business enterprise program, affirmative action plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.33 Labor Certification.

By its signature hereunder, Designer certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.34 Subcontracting.

As specified in this Agreement, Designer shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of District. Subcontracts, if any, shall contain a provision making them subject to each and every provision of this Agreement.

3.35 Supplemental Conditions.

Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

3.36 Entire Agreement.

This Agreement, with its exhibits, contains the entire agreement of the parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all parties hereto.

3.37 Federal Provisions.

Designer shall also fully and adequately comply with the provisions included in Exhibit “D” (“Federal Requirements”) attached hereto and incorporated herein by reference. With respect to any conflict between such Federal Requirements and the terms of this Agreement and/or the provisions of state law, the more stringent requirement shall control. Each and every provision required by the funding source of this Agreement, including by way of illustration and not by limitation, those provisions required by the United States Department of Agriculture, shall be deemed inserted herein as if fully set forth herein and the Agreement shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party the Agreement shall forthwith be physically amended to make such insertion or correction retroactively effective as of the first date this Agreement was entered into.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR DESIGN SERVICES AGREEMENT
BETWEEN THE SOUTHERN HUMBOLDT COMMUNITY HEALTHCARE DISTRICT
AND [***INSERT NAME***]**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

Southern Humboldt Community Healthcare [INSERT NAME OF CONSULTANT]
District

By: _____
[INSERT NAME]
[INSERT TITLE]

By: _____
Its: _____

Printed Name: _____

ATTEST:

By: _____
District Clerk

EXHIBIT "A"
DESIGNER'S SCOPE OF SERVICES

1. GENERAL REQUIREMENTS.

1.1 Basic Services. Designer agrees to perform all the necessary professional design, engineering (e.g. mechanical, electrical, plumbing, structural, site engineering, and any other necessary engineering services mutually agreeable to the parties) and construction administration services for the Project in a timely and professional manner, consistent with the standards of the profession, including those provided for herein.

1.2 Exclusions from Basic Services. The following services shall be excluded from the basic services listed above: **[INSERT IF APPLICABLE] [COMMON EXCLUSIONS: civil engineering, landscape architectural, soils engineering, geotechnical services, hazardous waste or toxic substances engineering or other SERVICES.]**

1.3 Additional Services. Designer shall perform the following Additional Services for the Project: **[INSERT ADDITIONAL SERVICES OR "N/A" IF NOT APPLICABLE]**

1.4 Communication with District. Designer shall participate in consultations and conferences with authorized representatives of District and/or other local, regional, or state agencies concerned with the Project, which may be necessary for the completion of the Project or the development of the drawings, specifications and documents in accordance with the applicable standards and requirements of law and the District. Such consultations and conferences shall continue throughout the planning and construction of the Project and the contractor's warranty period. Designer shall take direction only from the District's Representative, or any other representative specifically designated by the District for this Project, including any construction manager hired by the District.

1.5 Coordination and Cooperation with Construction Manager. The District may hire a construction manager to administer and coordinate all or any part of the Project on its behalf. If the District does so, it shall provide a copy of its agreement with the construction manager so that the Designer will be fully aware of the duties and responsibilities of the construction manager. The Designer shall cooperate with the construction manager and respond to any requests or directives authorized by the District to be made or given by the construction manager. The Designer shall request clarification from the District in writing if the Designer should have any questions regarding the authority of the construction manager.

2. INITIAL PLANNING PHASE.

During the initial planning phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

2.1 Project Feasibility. Provide advice and assistance to District in determining the feasibility of the Project, analysis of the type and quality of materials and construction to be selected, the site location, and other initial planning matters.

2.2 Meeting Budget and Project Goals. Designer shall notify District in writing of potential complications, cost overruns, unusual conditions, and general needs that potentially

impact the Project budget and time line, including the District's Preliminary Construction Budget. Designer shall use its best judgment in determining the balance between the size, type and quality of construction to achieve a satisfactory solution within the Project's budget and construction allowance. It shall be the duty of the Designer to design the Project within budget. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by the stated amount, Designer may be required to make the necessary changes in the drawing and specifications, at its sole cost and expense, to bring the bids within the required budget.

2.3 Permits, Approvals and Authorizations. As indicated in Section 3.5.4 of the Agreement, Designer shall assist District in securing easements, encroachment permits, rights of way, dedications, infrastructures and road improvements, as well as coordinating with utilities and adjacent property owners.

3. SCHEMATIC PLAN PHASE.

During the schematic plan phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

3.1 Funding Documents. Designer shall provide a site plan and all other Project-related information necessary and required for an application by District to any federal, state, regional, or local agencies for funds to finance the construction Project.

3.2 Schematic Plans. In cooperation with District, Designer shall prepare preliminary plans and studies, schematic drawings, site utilization plans, and phasing plans showing the scale and relationship of the components of the Project, the plot plan development at the site, and the proposed design concept of the buildings ("Schematic Plans"). Designer shall incorporate the functional requirements of District into the Schematic Plans. The Schematic Plans shall meet all laws, rules and regulations of the State of California. The Schematic Plans shall show all rooms incorporated in each building of the Project in single-line drawings, and shall include all revisions required by District or by any federal, state, regional or local agency having jurisdiction over the Project. All design drawings for the Project shall be in a form suitable for reproduction.

3.3 Preliminary Project Budget. Designer shall use the District's Preliminary Construction Budget and its own expertise and experience with the Project to establish a preliminary project budget or allowance in a format required by District ("Designer's Preliminary Project Budget"). The purpose of the Designer's Preliminary Project Budget is to show the probable Project cost in relation to District's Preliminary Construction Budget and the construction standards of any applicable funding agency. If Designer perceives site considerations which render the Project expensive or cost prohibitive, Designer shall disclose such conditions in writing to District immediately. As discussed herein, including in Section 7.3, if the lowest responsive and responsible bid for the Project exceeds the budget by more than the stated amount, Designer may be required to make the necessary changes in the drawings and specifications, at its sole cost and expense, to bring the bids within the required budget Designer shall provide a preliminary written time schedule for the performance of all construction work on the Project.

3.4 Copies of Schematic Plans and Other Documents. Designer, at its own expense, shall provide a complete set of the Schematic Plans described herein for District's review and approval. Additionally, at District's expense, Designer shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by District shall be provided at actual cost to District.

4. DESIGN DEVELOPMENT PHASE.

During the design development phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

4.1 Design Development Documents. Once District provides Designer with specific written approval of the Schematic Plans described herein, Designer shall prepare design development documents consisting of: (1) site and floor plans; (2) elevations; and (3) any other drawings and documents sufficient to fix and describe the types and makeup of materials, as well as the size and character of the Project's structural, mechanical and electrical systems, and to outline the Project specifications ("Design Development Documents"). The Design Development Documents shall be prepared in sufficient form to present to the District Board of Directors for approval.

4.2 Copies of Design Development and Other Documents. Designer, at its own expense, shall provide a complete set of the Design Development Documents described herein for District's review and approval. Additionally, at District's expense, Designer shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by District shall be provided at actual cost to District.

4.3 Updated Project Budget. Designer shall use its Preliminary Project Budget and expertise and experience with the Project to establish an updated estimate of probable construction costs, containing detail consistent with the Design Development Documents as set forth herein and containing a breakdown based on types of materials and specifications identified herein ("Designer's Updated Project Budget").

4.4 Timetable. Designer shall provide a written timetable for full and adequate completion of the Project to District.

4.5 Application for Approvals. Designer shall assist District in applying for and obtaining required approvals from all federal, state, regional or local agencies concerned with the Project. Designer shall furnish and process all design and engineering information required to prepare and process applications to applicable utilities in order to secure priorities and materials, to aid in the construction of the Project and to obtain final Project approval and acceptance by any of the above agencies as may be required.

4.6 Color and Other Aesthetic Issues. Designer shall provide, for District's review and approval, a preliminary schedule of all color materials and selections of textures, finishes and other matters involving an aesthetic decision about the Project.

5. FINAL WORKING DRAWINGS AND SPECIFICATIONS.

During the final working drawings and specifications phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

5.1 Final Working Drawings and Specifications. Once District provides Designer with specific written approval of the Design Development Documents described herein, Designer shall prepare such complete working drawings and specifications as are necessary for developing complete bids and for properly executing the Project work in an efficient and thorough manner ("Final Working Drawings and Specifications"). Such Final Working Drawings and Specifications shall be developed from the Schematic Plans and Design Development Documents approved by

District. The Final Working Drawings and Specifications shall set forth in detail all of the following: (1) the Project construction work to be done; (2) the materials, workmanship, finishes, and equipment required for the architectural, structural, mechanical, and electrical systems; and (3) the utility service connection equipment and site work. As indicated in Section 3.9.2 of the Agreement, District may be requested to supply Designer with the necessary information to determine the proper location of all improvements on and off site, including record drawings (“as-built drawings”) in District’s possession. Designer will make a good-faith effort to verify the accuracy of such information by means of a thorough interior and exterior visual survey of site conditions. District shall also make a good-faith effort to verify the accuracy of the as-built drawings and provide any supplemental information to Designer which may not be shown on the as-built drawings.

5.2 Form. The Final Working Drawings and Specifications must be in such form as will enable Designer and District to secure the required permits and approvals from all federal, state, regional or local agencies concerned with the Project. In addition, the Final Working Drawings and Specifications must be in such form as will enable District to obtain, by competitive bidding, a responsible and responsive bid within the applicable budgetary limitations and cost standards. The Final Working Drawings and Specifications shall be clear and legible so that uniform copies may be on standard architectural size paper, properly indexed and numbered, and shall be capable of being clearly copied and assembled in a professional manner by Designer.

5.3 Approval and Revisions. District shall review, study, and check the Final Working Drawings and Specifications presented to it by Designer, and request any necessary revisions or obtain any necessary approvals by the District Board of Directors, subject to the approval of all federal, state, regional or local agencies concerned with the Project. Designer shall make all District-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications at no additional cost, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier District direction or Designer’s professional judgment. Designer shall bring any such conflicts and/or inconsistencies to the attention of District. The parties agree that Designer, and not the District, possesses the requisite expertise to determine the constructability of the Final Working Drawings and Specifications. However, the District reserves the right to conduct one or more constructability review processes with the Final Working Drawings and Specifications, and to hire an independent designer or other consultant to perform such reviews. Any such independent constructability review shall be at District’s expense. Designer shall make all District-requested changes, additions, deletions, and corrections in the Final Working Drawings and Specifications which may result from any constructability review, at no additional cost to the District, so long as they are not in conflict with the requirements of public agencies having jurisdiction or prior approval, or inconsistent with earlier District direction or Designer’s professional judgment. If such changes, additions, deletions or corrections are inconsistent with prior District direction, Designer shall make such alterations and be compensated therefore pursuant to the Additional Services provision of this Agreement.

5.4 Costs of Construction. It is understood by Designer that should the Final Working Drawings and Specifications be ordered by District, District shall specify the sum of money set aside to cover the total cost of construction of the work, exclusive of Designer’s fees. Should it become evident that the total construction cost will exceed the specified sum, Designer shall at once present a statement in writing to the District’s Representative setting forth this fact and giving a full statement of the cost estimates on which the conclusion is based.

5.5 Copies of Final Working Drawings and Specifications and Other Documents.

Designer, at its own expense, shall provide a complete set of the Final Working Drawings and Specifications described herein for District's review and approval. Additionally, at District's expense, Designer shall provide such documents as may be required by any federal, state, regional or local agencies concerned with the Project. Any additional copies required by District shall be provided at actual cost to District.

6. CONSTRUCTION CONTRACT DOCUMENTS.

During the construction contract documents phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

6.1 Bid and Contract Documents. If so required by District, Designer shall assist District in the completion of all bid and construction documents, including but not limited to, the Notice Inviting Bids, Instructions to Bidders, Contract Bid Forms (including Alternate Bids as requested by District), Contract, General Conditions, Supplementary General Conditions, Special Conditions, DVBE and other applicable affirmative action documents, Performance Bond, Payment Bond, Escrow Agreement for Security Deposits, and any other certifications and documents required by federal, state and local laws, rules and regulations which may be reasonably required in order to obtain bids responsive to the specifications and drawings. All such documents shall be subject to the approval of District and District's legal counsel.

6.2 Final Estimate. At the time of delivery of these bid and construction documents, which shall include the Final Working Drawings and Specifications (collectively referred to herein as the "Construction Documents"), Designer shall provide District with its final estimate of probable construction cost ("Designer's Final Estimate"). As discussed herein, including in Section 7.3, it shall be the Designer's duty to design the Project within budget.

7. BID PHASE.

During the bid phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

7.1 Reproducible Construction Documents. Once District provides Designer with specific written approval of the Construction Documents and Designer's Final Estimate, Designer shall provide to District one set of reproducible Construction Documents.

7.2 Distribution of Contract Documents and Review of Bids. Designer shall assist District in distributing the Construction Documents to bidders and conducting the opening and review of bids for the Project.

7.3 Over Budget. If the apparent lowest responsive and responsible bid on the Project exceeds the Designer's Final Estimate by more than five percent (5%), District may request Designer to amend, at Designer's sole cost and expense, the Final Drawings and Specifications in order to rebid the Project and receive a lowest responsive and responsible bid equal to or less than the Designer's Final Estimate. All revisions necessary to bring the lowest responsive and responsible bid within the Designer's Final Estimate, including any omissions, deferrals or alternates, shall be made in consultation with, and subject to the approval of, the District.

8. CONSTRUCTION PHASE.

During the construction phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

8.1 Observation. The Project Designer shall observe work executed from the Final Working Drawings and Specifications in person, provided that District may, in its discretion, consent to such observation by another competent representative of Designer.

8.2 General Administration. Designer shall provide general administration of the Construction Documents and the work performed by the contractors.

8.3 Pre-Construction Meeting. Designer shall conduct one or more pre-construction meetings, as the District determines is needed for the Project, with all interested parties.

8.4 Site Visits of Contractor's Work. Designer shall conduct site visits to observe each contractors' work for general conformance with the Construction Documents and with any approved construction schedules or milestones. Such site visits shall be conducted as often as are necessary and appropriate to the stage of construction, according to the District's sole discretion, but in no event less than weekly.

8.5 Site Visits of Inspector's Work. Designer shall conduct site visits to communicate and observe the activities of the District inspectors. Such site visits shall be conducted as often as is mutually acceptable to Designer and District. Designer shall direct the District inspectors and the Project contractors to coordinate the preparation of record drawings indicating dimensions and location of all "as-built" conditions, including but not limited to, underground utility lines.

8.6 Coordination of Designer's Designers. Designer shall cause all architects, engineers and other consultants, as may be hired by Designer or District, to observe the work completed under their disciplines as required, and approve and review all test results for general conformance with the Construction Documents.

8.7 Reports. Designer shall make regular reports as may be required by applicable federal, state or local laws, rules or regulations, as well as the federal, state, regional or local agencies concerned with the Project.

8.8 Construction Meetings; Minutes. Designer shall attend all construction meetings and provide written reports/minutes to the District after each construction meeting in order to keep District informed of the progress of the work. Such meetings shall occur at a frequency necessary for the progress of the Project work, according to the District's sole discretion, but no less than weekly.

8.9 Written Reports. Designer shall make written reports to District as necessary to inform District of problems arising during construction, changes contemplated as a result of each such problems, and progress of the Project work.

8.10 Written Records. Designer shall keep accurate written records of the progress and quality of the Project work and the time schedules, and shall advise the contractors and District of any deviations from the time schedule which could delay timely completion of the Project.

8.11 Material and Test Reports. Designer shall check and process, in a timely manner, all required material and test reports for the Project work. In addition, Designer shall provide notice of any deficiencies in material or work reflected in such reports, as well as its recommendation for correction of such deficiencies, to the contractors and District.

8.12 Review and Response to Submissions. Designer shall review and respond, in a timely manner, to all schedules, submittals, shop drawings, samples, information requests, change requests, and other submissions of the contractor and subcontractors for compliance with, or alterations and additions to, the Construction Documents. Designer's review and response shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.13 Rejection of Work. Designer shall promptly reject, as discussed with District, work or materials which do not conform to the Construction Documents. Designer shall immediately notify the District and contractor(s) of such rejections. Designer shall also have the authority to recommend to the District that additional inspection or testing of the work be performed, whether or not such work is fabricated, installed or completed.

8.14 Substitutions. Designer shall consult with District, in a timely manner, with regard to substitution of materials, equipment and laboratory reports thereof, prior to the District's final written approval of such substitutions. Designer's consultation shall be done in such a manner so as to ensure the timely and uninterrupted progress of the Project work.

8.15 Revised Documents and Drawings. Designer shall prepare, at no additional expense to District, all documents and/or drawings made necessary by errors and omissions in the originally approved Construction Documents.

8.16 Change Requests and Material Changes. Designer shall evaluate and advise District, in a timely manner and in writing, of any change requests and material change(s) which may be requested or necessary in the Project plans and specifications. Designer shall provide the District with its opinion as to whether such change requests should be approved, denied or revised. If the District has not hired a construction manager or other person to do so, the Designer shall prepare and execute all change orders and submit them to the District for authorization. If the District has designated a construction manager or other person to prepare all change orders, the Designer shall review all change orders prepared by such person, execute them and deliver them to the District for authorization if they meet with the Designer's approval, or submit them to the District with recommendations for revision or denial if necessary. Designer shall not order contractors to make any changes affecting the contract price without approval by District of such a written change order, pursuant to the terms of the Construction Documents. Designer may order, on its own responsibility and pending District Board of Directors approval, changes necessary to meet construction emergencies, if written approval of District's Representative is first secured.

8.17 Applications for Payment. Designer shall examine, verify and approve contractor's applications for payment, and shall issue certificates for payment in amounts approved by the District's inspector.

8.18 Final Color and Product Selection. Designer shall coordinate final color and product selection with District's original design concept.

8.19 Substantial Completion. Designer shall determine the date of substantial completion, in consultation with the District.

8.20 Punch List. After determining that the Project is substantially complete, Designer shall participate in the inspection of the Project and shall review all remaining deficiencies and minor items needed to be corrected or completed on the Project, including those identified on the punch list prepared by the contractor ("Punch List Items"). Designer shall notify contractor in writing that all Punch List Items must be corrected prior to final acceptance of the Project and final payment. Designer shall also notify District of all Punch List Items.

8.21 Warranties. Designer shall review materials assembled by the contractor and subcontractors with regard to all written warranties, guarantees, owners' manuals, instruction books, diagrams, record "as built" drawings, and any other materials required from the contractors and subcontractors pursuant to the Construction Documents. Designer shall coordinate and provide these materials to the District.

8.22 Certificate of Completion. Designer shall participate in any further inspections of the Project necessary to issue Designer's Certificate of Completion and final certificate for payment.

8.23 Documents for Project Close-Out. Designer shall cause all other architects, engineers and other consultants, as may be hired by Designer, to file any and all required documentation with the District or other governmental authorities necessary to close out the Project. Designer shall assist the District in obtaining such documentation from all other architects, engineers, or other consultants.

9. AS-BUILT DRAWINGS.

During the as-built drawings phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

9.1 As-Built Drawings and Specifications. Not later than thirty (30) days after substantial completion of the Project, before receipt of final payment, Designer shall review and forward the Final Working Drawings and Specifications, indicating on them all changes made by change orders or otherwise pursuant to the Construction Documents, as well as all information called for on the specifications, thus producing an "as-built" set of Final Working Drawings and Specifications ("As-Built Drawings and Specifications"). The As-Built Drawings and Specifications shall show, among other things, the location of all concealed pipe, buried conduit runs and other similar elements within the completed Project. Designer shall personally review and certify that the As-Built Drawings and Specifications are a correct representation of the information supplied to Designer by any inspectors and the contractor, and shall obtain certifications from any inspectors and the contractor that the drawings are correct.

9.2 Approval. Once District provides Designer with specific written approval of the As-Built Drawings and Specifications, Designer shall forward to District the complete set of original As-Built Drawings and Specifications or a complete set of reproducible duplicate As-Built Drawings and Specifications. The tracing shall be of such quality that clear and legible prints may be made without appreciable and objectionable loss of detail.

9.3 Documents for Final Payment. Prior to the receipt of Designer's final payment, Designer shall forward to District all of the following: (1) one clear and legible set of reproductions

of the computations; (2) the original copy of the specifications; (3) the As-Built Drawings and Specifications as required herein; and (4) Designer's Certificate of Completion.

10. WARRANTY PERIOD.

During the warranty period phase of the Project, Designer shall do all of the following, as well as any incidental services thereto:

10.1 Advice. Designer shall provide advice to District on apparent deficiencies in the Project during any applicable warranty periods for the Project.

Attachment 1 to Exhibit "A"

As used herein, "Owner" refers to the District.

**[Insert USDA SUPPLEMENTAL CONDITIONS TO THE AGREEMENT BETWEEN
OWNER AND ARCHITECT and all attachments thereto]**

EXHIBIT "B"
FEE AND PHASING/FUNDING SCHEDULES

1. FEE SCHEDULE.

Designer will invoice District on a monthly cycle based on the following fee schedule. Designer will include with each invoice a detailed progress report that indicates the amount of budget spent on each phase and the total amount spent against the Total Compensation. Designer will inform District regarding any out-of-scope work being performed by Designer for which Designer intends to seek compensation from District.

[Insert fee schedule]

2. PHASING/FUNDING SCHEDULE.

Progress payments towards Total Compensation shall never exceed the following percentages of Total Compensation as of the phase indicated:

Initial Planning Phase:	_____ percent (% _____)
Schematic Plan Phase:	_____ percent (% _____)
Design Development Phase:	_____ percent (% _____)
Final Working Drawings & Specifications Phase:	_____ percent (% _____)
Construction Contract Documents Phase:	_____ percent (% _____)
Bid Phase:	_____ percent (% _____)
Construction Phase:	_____ percent (% _____)
As-Built Drawings Phase:	_____ percent (% _____)
Warranty Period Phase:	_____ percent (% _____)

EXHIBIT "C"

COMPENSATION RATES AND REIMBURSABLE EXPENSES

1. HOURLY COMPENSATION RATES.

[INSERT DESIGNER'S HOURLY RATES]

2. REIMBURSABLE EXPENSES.

[INSERT AUTHORIZED REIMBURSABLE EXPENSES]

3. ADDITIONAL SERVICES.

Additional Services shall be computed at the actual hourly rates listed above.

4. ADDITIONAL DESIGNERS.

If District requires Designer to hire consultants to perform any Additional Services, Designer shall be compensated therefore at the Designer's actual hourly rates plus a markup of **[INSERT AMOUNT OR PERCENTAGE]**. District shall have the authority to review and approve the rates of any such consultants.

EXHIBIT "D"

FEDERAL PROVISIONS

During the performance of this contract, Designer shall comply with all applicable federal laws and regulations including but not limited to the federal contract provisions in this Exhibit.

1. **CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA FIRMS (2 C.F.R. § 200.321)**

- (A) Designer shall be subject to 2 C.F.R. § 200.321 and will take affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible and will not be discriminated against on the grounds of race, color, religious creed, sex, or national origin in consideration for an award.
- (B) Affirmative steps shall include:
 - (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
 - (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
 - (v) Using the services/assistance of the Small Business Administration (SBA), and the Minority Business Development Agency (MBDA) of the Department of Commerce.

Designer shall submit evidence of compliance with the foregoing affirmative steps when requested by the District.

2. **COST PRINCIPLES (2 C.F.R. PART 200, SUBPART E)**

- (A) Costs under this contract must conform to the cost principles set forth under the Uniform Rules at 2 C.F.R. Part 200, subpart E ("Cost Principles"). In general, costs must (i) be necessary and reasonable; (ii) allocable to the grant award; (iii) conform to any limitations or exclusions set forth in the Cost Principles; (iv) be adequately documented; and (v) be determined in accordance with generally accepted accounting principles ("GAAP"), except, for state and local governments and Indian tribes only, as otherwise provided for in 2 C.F.R. Part 200, subpart E. 2 C.F.R. § 200.403. Costs that are determined unallowable pursuant to a federal audit are subject to repayment by Designer.

3. **ACCESS TO RECORDS & RECORD RETENTION (2 C.F.R. 200.336)**

- (A) Designer shall comply with 2 C.F.R. § 200.336 and provide the Federal Agency administering the funds for which this Project is funded (“Federal Agency”), Inspectors General, the Comptroller General of the United States, and the State of California or any of their authorized representatives access, during normal business hours, to documents, papers, books and records which are directly pertinent to this contract for the purposes of making and responding to audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to the Designer’s personnel for the purpose of interview and discussion related to the books and records.
- (B) The Designer agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (C) The Designer agrees to provide the Inspectors General, the Comptroller General of the United States, and the State of California or their authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

4. **REQUIRED CONTRACT PROVISIONS IN ACCORDANCE WITH APPENDIX II TO PART 200 – CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.326)**

- (A) Appendix II to Part 200 (A); Appendix II to Part 200 (B): Remedies for Breach; Termination for Cause/Convenience. If the contract is in excess of \$10,000 and the contract does not include provisions for both termination for cause and termination for convenience by the District, including the manner by which it will be effected and the basis for settlement, then the following termination clauses shall apply. If the contract is for more than the simplified acquisition threshold and does not provide for administrative, contractual, or legal remedies in instances where Contractor violates or breaches the terms of the contract, then the following termination clauses shall apply and have precedence over the contract.
 - (i) Termination for Convenience. The District may, by written notice to Designer, terminate this contract for convenience, in whole or in part, at any time by giving written notice to Designer of such termination, and specifying the effective date thereof (“Notice of Termination for Convenience”). If the termination is for the convenience of the District, the District shall compensate Designer for work or materials fully and adequately provided through the effective date of termination. No amount shall be paid for unperformed work or materials not provided, including anticipated profit. Designer shall provide documentation deemed adequate by the District to show the work actually completed or materials provided by Designer prior to the effective date of termination. This contract shall terminate on the effective date of the Notice of Termination.
 - (ii) Termination for Cause. If Designer fails to perform pursuant to the terms of this contract, the District shall provide written notice to Designer specifying the default (“Notice of Default”). If Designer does not cure such default within ten (10) calendar days of receipt of Notice of Default, the District may terminate this contract for cause. If Designer fails to cure a default as set forth above, the District may, by written notice to Designer, terminate this contract for cause, in whole or in part, and specifying the effective date thereof (“Notice of Termination for Cause”). If the termination is for cause, Designer shall be compensated for that portion of the work or materials provided which has been

fully and adequately completed and accepted by the District as of the date the District provides the Notice of Termination. In such case, the District shall have the right to take whatever steps it deems necessary to complete the project and correct Designer's deficiencies and charge the cost thereof to Designer, who shall be liable for the full cost of the District's corrective action, including reasonable overhead, profit and attorneys' fees.

- (iii) Reimbursement; Damages. The District shall be entitled to reimbursement for any compensation paid in excess of work rendered or materials provided and shall be entitled to withhold compensation for defective work or other damages caused by Designer's performance of the work.
- (iv) Additional Termination Provisions. Upon receipt of a Notice of Termination, either for cause or for convenience, Designer shall promptly discontinue the work unless the Notice directs to the contrary. Designer shall deliver to the District and transfer title (if necessary) to all provided materials and completed work, and work in progress including drafts, documents, plans, forms, maps, products, graphics, computer programs and reports. The rights and remedies of the parties provided in this Section are in addition to any other rights and remedies provided by law or under this contract. Designer acknowledges the District's right to terminate this contract with or without cause as provided in this Section, and hereby waives any and all claims for damages that might arise from the District's termination of this contract. The District shall not be liable for any costs other than the charges or portions thereof which are specified herein. Designer shall not be entitled to payment for unperformed work or materials not provided, and shall not be entitled to damages or compensation for termination of work or supply of materials. If District terminates this contract for cause, and it is later determined that the termination for cause was wrongful, the termination shall automatically be converted to and treated as a termination for convenience. In such event, Designer shall be entitled to receive only the amounts payable under this Section, and Designer specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits. The rights and remedies of the District provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this contract including, but not limited to, the right to specific performance.

(B) Appendix II to Part 200 (C) – Equal Employment Opportunity: Except as otherwise provided under 41 C.F.R. Part 60, Designer shall comply with the following equal opportunity clause, in accordance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and implementation regulations at 41 C.F.R. Chapter 60:

- (i) Designer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Designer will take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment upgrading, demotion, transfer, recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including

apprenticeship. Designer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the District setting forth the provisions of this nondiscrimination clause.

- (ii) Designer will, in all solicitations or advertisements for employees placed by or on behalf of Designer, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex, or national origin.
- (iii) Designer will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Designer's legal duty to furnish information.
- (iv) Designer will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (v) Designer will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (vi) Designer will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (vii) In the event of Designer's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (viii) Designer will include the provisions of paragraphs (i) through (viii) in every subcontract or purchase order unless exempted by rules, regulations, or

orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Designer will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event Designer becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Designer may request the United States to enter into such litigation to protect the interests of the United States.

(C) Appendix II to Part 200 (D) – Davis-Bacon Act; Copeland Act: [Not Used. Does not apply to design professional services. 29 CFR § 5.2]

(D) Appendix II to Part 200 (E) – Contract Work Hours and Safety Standards Act:

(i) If this contract is in excess of \$100,000 and involves the employment of mechanics or laborers, Designer shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(ii) No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(iii) In the event of any violation of the clause set forth in paragraph (ii) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (ii) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (ii) of this section.

- (iv) The District shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Designer or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (iii) of this section.
- (v) The Designer or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (ii) through (v) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (ii) through (v) of this Section.

(E) Appendix II to Part 200 (F) – Rights to Inventions Made Under a Contract or Agreement:

- (i) If the Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by the District.
- (ii) The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

(F) Appendix II to Part 200 (G) – Clean Air Act and Federal Water Pollution Control Act: If this contract is in excess of \$150,000, Designer shall comply with all applicable standards, orders, or requirements issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

- (i) Pursuant to the Clean Air Act, (1) Designer agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., (2) Designer agrees to report each violation to the District and understands and agrees that the District will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental

Protection Agency Regional Office, and (3) Designer agrees to include these requirements in each subcontract exceeding \$150,000.

- (ii) Pursuant to the Federal Water Pollution Control Act, (1) Designer agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., (2) Designer agrees to report each violation to the District and understands and agrees that the District will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Designer agrees to include these requirements in each subcontract exceeding \$150,000.

(G) Appendix II to Part 200 (H) – Debarment and Suspension: A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- (i) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Designer is required to verify that none of the Designer, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (ii) Designer must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (iii) This certification is a material representation of fact relied upon by District. If it is later determined that Designer did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the District, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (iv) Designer warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs. Designer also agrees to verify that all subcontractors performing work under this contract are not debarred, disqualified, or otherwise prohibited from participation in accordance with the requirements above. Designer further agrees to notify the District in writing immediately if Designer or its subcontractors are not in compliance during the term of this contract.

(H) Appendix II to Part 200 (I) – Byrd Anti-Lobbying Act: If this contract is in excess of \$100,000, Designer shall have submitted and filed the required certification pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1353). If at any time during the contract term funding exceeds \$100,000.00, Designer shall file with the District the Federal Standard Form LLL titled “Disclosure Form to Report Lobbying.” Designers that apply or bid for an award exceeding \$100,000 must file

the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

(I) Appendix II to Part 200 (J) – Procurement of Recovered Materials:

- (i) Designer shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement.
- (ii) In the performance of this contract, the Designer shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price.
- (iii) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

5. **MISCELLANEOUS PROVISIONS**

- (A) Designer acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Designer's actions pertaining to this contract.
- (B) The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the District, Designer, any subcontractors or any other party pertaining to any matter resulting from the contract.
- (C) General and Administrative Expenses And Profit For Time And Materials Contracts/Amendments.
 - (i) General and administrative expenses shall be negotiated and must conform to the Cost Principles.
 - (ii) Profit shall be negotiated as a separate element of the cost. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the Designer, the Designer's investment, the amount of subcontracting, the quality of its record of past

performance, and industry profit rates in the surrounding geographical area for similar work.

- (iii) Any agreement, amendment or change order for work performed on a time and materials basis shall include a ceiling price that Designer exceeds at its own risk.

6. BUY AMERICA DOMESTIC PROCUREMENT PREFERENCE

As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, on or after May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program.

Recipients of an award of Federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1. all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

For further information on the Buy America preference, please visit www.doi.gov/grants/BuyAmerica. Additional information can also be found at the White House Made in America Office website: www.whitehouse.gov/omb/management/made-in-america/.

Designer shall comply with all of District's obligations District's obligation with respect to Section 70914 of the Bipartisan Infrastructure Law as a Recipient of a award for Federal financial assistance in the performance of this Agreement as a condition of this Agreement.

7. ADDITIONAL TERMS.

a. The project will be subject to National Environmental Policy Act (NEPA) as well as the California Environmental Quality Act (“CEQA”).

b. The project will be subject to Section 504 of the Rehabilitation Act and the Architectural Barriers Act Standards.

c. Plans, specifications, all contractor solicitation documentation and contract documents must be submitted to USDA Rural Development for review and concurrence.

d. The construction project may be subject to the Build America Buy American (BABA) requirements. If so, the following provisions should be considered during design and must be added to the bidding and construction contract documents:

i. Information for Bidders: This contract is expected to be funded in whole or in part using funds from the Infrastructure Investment and Jobs Act. Section 70914 of the IIJA prohibits the use of these funds unless all iron, steel, and manufactured goods are produced in the United States. All iron and steel manufacturing processes must take place in the United States, except for metallurgical processes involving refinement of steel additives. There is no requirement for the origin of components and subcomponents of manufactured goods. Products listed at 48 CFR 25.104(a) have been determined to be unavailable in the United States and if required for the project may be purchased from foreign sources. No unauthorized use of foreign iron, steel, and/or manufactured goods will be allowed on this project. {The following waivers apply to this project:}

ii. Supplemental General Conditions: This contract is expected to be funded in whole or in part using funds from the IIJA. Section 70914 of the IIJA prohibits the use of these funds unless all iron, steel, and manufactured goods are produced in the United States. All iron and steel manufacturing processes must take place in the United States, except for metallurgical processes involving refinement of steel additives. There is no requirement for the origin of components and subcomponents of manufactured goods. Products listed at 48 CFR 25.104(a) have been determined to be unavailable in the United States and if required for the project may be purchased from foreign sources. No unauthorized use of foreign iron, steel, and/or manufactured goods will be allowed on this project. {The following waivers apply to this project:}

e. If the Project receives an Emergency Rural Healthcare Grant (ERHC), compliance with the prevailing wage requirements of the Davis-Bacon and Related Acts will be required for contractors and subcontractors performing construction. Before bidding, the general wage determination from the Department of Labor website (<https://www.dol.gov>) must be added to bid documents and all contracts covered by the Act must include the statement “The contractor must comply with the minimum rates for wages for laborers and mechanics as determined by the Secretary of Labor in accordance with the provisions of the Davis-Bacon and Related Acts.” Labor standards provisions from 29 CFR 5.5(a) must be included in every contract.

f. If the existing building is classified as Historic, compliance with Section 106 of the National Historic Preservation Act of 1966 (NHPA) will be required.

USDA SUPPLEMENTAL CONDITIONS TO THE AGREEMENT BETWEEN OWNER AND ARCHITECT

The Provisions of this document shall delete, modify and supplement the provisions contained in the Agreement Between Owner and Architect in force for the project. The provisions contained in this document shall supersede any conflicting provisions of the Agreement. The term "Agency", as used in this document, shall mean the United States of America, acting through the United States Department of Agriculture.

A The following items required by the Agency are hereby incorporated into the Agreement:

A1 Architect's Basic Services

A1.1 The Architect shall provide the Owner with the appropriate documentation showing the Schematic Design and shall review the estimated Project cost to the Owner to seek the concurrence of the Agency. When the Owner has accepted and the Agency has concurred on the Schematic Design studies and estimated Project cost, the project Architect may be authorized to proceed with the Design Development/ Construction Documents.

A1.2 The Architect shall attend conferences with the Owner, representatives of the Agency and other interested parties as may be reasonably necessary.

A2 Construction Documents Phase Services

A2.1 The Architect shall certify in writing, to the best of the Architect's knowledge, information and belief that the Drawings and Specifications are in conformance with the applicable development standard as defined in Agency regulations, including 7 CFR 1942-A at 1924.18 and in accordance with the guidance at RD Instruction 1924-A, Guides 17, 18 and 19 (available here: <https://www.rd.usda.gov/files/1942a.pdf>) as they apply to the Architect's work. Such certification shall be evidenced by execution of Form RD 1924-25, Plan Certification.

A2.2 Prior to advertisement for bids, the Architect shall provide an electronic copy in .pdf format of Construction Documents for review and use by the Owner, the Agency and the appropriate Federal, State and local agencies from whom approval of the Project must be obtained.

A2.3 The Owner shall obtain Agency concurrence with the Construction Documents, estimated Project costs, and authorization to proceed in writing prior to advertisement for bids.

A3 Bidding or Negotiating Phase Services

A.3.1 In addition to the electronic copies of Construction Documents originally issued by the Owner to builders exchanges and other locations available to the public, the Architect shall be responsible for furnishing additional copies of the Construction Documents as requested by the prospective bidders, and other interested parties, and may charge them a reasonable cost for such copies.

A4 Construction Phase Services

A4.1 The Architect's duties terminate at the expiration of the period of correction of the work described in the construction contract. The Architect shall be a representative of and shall advise and consult with the Owner during construction until final payment to the Contractor is paid, and at the Owner's direction during the period of correction of the Work described in the Contract for Construction, including a review of the project during the 11th month after the date of substantial

completion. If necessary, the Architect shall furnish architectural services and consultations necessary to correct minor construction defects encountered during such correction period and such services may be charged as an added service, subject to prior approval by the Owner.

A4.2 Upon award of the construction contract, the Architect shall furnish to the Owner one hard-copy set of Construction Contract Documents for execution plus one electronic copy. The costs of these sets shall be included in the compensation to the Architect.

A4.3 The Architect shall facilitate and moderate a Preconstruction Conference in consultation with the Owner and Agency. The Preconstruction Conference shall include, at a minimum, representatives of the Owner, Architect, Contractor, Agency and Project Manager (if applicable). The Architect shall create and distribute a meeting Agenda which shall include the Agency agenda, which will be provided to the Architect prior to the conference. If agreed by all parties, the conference may occur remotely.

A4.4 The Architect shall visit the site at least monthly and such site visits shall be documented in writing on inspection report forms acceptable to the Owner and the Agency. Electronic copies shall be furnished to the Owner, Contractor, and the Agency.

A4.5 The Architect shall advise the Owner and the Agency of required tests, inspections and test results; shall furnish coordination of such tests and inspections; and shall advise the Owner and the Agency of the results of same. Electronic copies of tests results shall be furnished to the Owner, and the Agency.

A4.6 The Architect's duties shall include review of contractor change orders and draw requests. The Owner, with the assistance of the Architect, shall obtain Agency concurrence on all Certificates of Payment before payment is made. The Owner, with the assistance of the Architect, shall obtain Agency concurrence in writing for all change orders prior to the performance of the work.

A4.7 The Architect shall be responsible to indicate completion of the project. The Architect shall conduct a site visit prior to the issuance of the Certificate of Substantial Completion to identify that, to the Architect's best knowledge, information, and belief, the work is in sufficient conformance with the Construction Documents so that the Owner can occupy or utilize the work for its intended use or the Architect shall submit a written report of work to be completed or corrected to the Owner, the Agency, and the Contractor prior to final acceptance. The Architect shall notify the Agency of the site visit, allowing reasonable time for the Agency's representative to attend. Prior to submitting the final Certificate for Payment, the Architect shall confirm to the Owner and Agency that all previously noted work to be completed or corrected has been completed or corrected in accordance with the contract documents.

A5. Supplemental Services

A5.1 The Architect shall review the project cost estimate for reasonableness and shall provide a statement to the Owner and Agency summarizing that review.

A5.2 Architect's services shall include and costs shall be included for the following:

- a) Review of the project Cost Estimate for reasonableness.
- b) Monthly on-site project representation
- c) As-Constructed Record Drawings (in electronic format) to be provided to the Owner and Agency.

A6. Owner's Responsibilities.

A6.1 Owner shall provide Agency design and construction document regulations and guides to the Architect, upon request. The owner shall provide information on requirements and procedures of the agency. See also Article A2.1.

A7. Termination or Suspension:

A8.1 Should the project be suspended for any period and for any reason, when the Project is resumed, the Architect's compensation may be equitable adjusted, as mutually agreed, to provide for expenses incurred in the interruption and resumption of the Architect's services.

A8. Miscellaneous Provisions

A8.1 This Agreement and any amendments to the Agreement shall not be in full force and effect until concurred with in writing by an authorized Agency representative. Such concurrence shall be evidenced by the signature of such a representative of the Agency in the space provided at the end of this document.

A8.2 If applicable, the Architect shall comply with section 319 of Public Law 101-121, as supplemented by the Department of Agriculture regulations (7 CFR part 3018). This statute pertains to restrictions on lobbying and applies to the recipients of contracts and subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. If applicable, the Architect must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for the Agreement. The certification and disclosure forms shall be provided by the Owner.

A8.3 The Architect agrees to abide by the requirements under Executive Order 12549, which pertains to the debarment or suspension of a person from participating in a Federal program or activity. If the total compensation described in Article 1.5 exceeds \$25,000, the Architect shall complete the relevant certification form provided by the Owner.

A9. Compensation

A9.1 The Architect shall provide a detailed cost estimate for Reimbursable Expenses as shown below, which shall be attached and made a part of this Agreement. The cost estimate must be approved in writing by the Owner and shall be concurred with in writing by the Agency before the services are rendered. The billings for reimbursable services shall not exceed the budgeted amount without prior approval of the Owner with the concurrence of the Agency. The Agency may not concur in requests for payments which exceed the budgeted amount unless it is established that funds are available for such expenditures. Reimbursable expenses, if applicable under the terms of this Agreement, are as follows:

- Transportation and authorized out-of-town travel and subsistence;
- Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- Permitting and other fees required by authorities having jurisdiction over the Project;
- Printing, reproductions, plots, standard form documents;
- Postage, handling and delivery;
- Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner or required for the Project;
- Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- If required by the Owner, and with the Owner's prior written approval, the Architect's Consultants' expenses of professional liability insurance dedicated exclusively to this

Project, or the expenses of additional insurance coverage or limits in excess of that normally carried by the Architect's consultants;

- All taxes levied on professional services and on reimbursable expenses;
- Site office expenses;
- Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective, if applicable;
- Other similar Project-related expenditures.

A10. Signature Block

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, these Supplemental Conditions to the Agreement Between Owner and Architect on the respective dates indicated below.

OWNER:

ARCHITECT:

By _____

By _____

Print or Type Name _____

Print or Type Name _____

Title _____

Title _____

Date _____

Date _____

The United States of America, as potential lender or insurer of funds to defray the costs of this agreement and without liability for any payments thereunder, hereby concurs in the form, content and the execution of the Agreement Between Owner and Architect and the Supplemental Conditions contained herein. The Agency is not a party to the Agreement. Such concurrence merely signifies that the referenced documents are consistent with Agency requirements.

U.S. Department of Agriculture
Rural Development
Rural Housing Service

By _____

Print or Type Name _____

Title _____

Date _____

PLAN CERTIFICATION

(Property Name/Applicants Name and Case Number)	
(Property Address)	(City)
(County)	(State)

BUILDING TYPE: Single Family Multi-Family
PLANS: Original Modifications

I, _____ being a _____
(type or print) *(licensed architect, engineer, or authorized building official, etc.)*
in the State of _____, hereby certify that I have reviewed:

- the plans and specifications dated _____ prepared by _____
(name of firm or individual)
for the above property
- the thermal performance plans, specifications and calculations dated _____
prepared by _____ for the above property
(name of firm or individual)
- the seismic design (plans and specifications) dated _____ prepared by _____
_____ for the above property
(name of firm or individual)
- modifications listed below, that have been clearly indicated on the drawings and specifications
dated _____ prepared by _____ and certified by _____
(name of firm or individual)
_____ and related to the above property
(name of firm or individual)

MODIFICATIONS

Based upon this review, to the best of my/our knowledge, information, and belief, these documents comply with the:

_____ and
(name and edition of the applicable development standard)

_____ and
(name and edition of the applicable energy standards/requirements in accordance with RD Instruction 1924-A, Exhibit D)

designated as the applicable Rural Development or Farm Service Agency development standards for this project.

I understand the purpose of this certification is to induce United States Government to finance the construction of the above project and plan. I further understand that false certification constitutes a violation of 18 U.S.C. Section 1001 punishable by fine and/or imprisonment and, in addition, may result in debarment from participating in future government programs.

(Signature)

(Date)

(Type or print name)

(Professional Registration No.)

(Title)

(Expiration Date if applicable)

(Area Code + Telephone Number)

USDA
Form RD 400-6
(Rev. 2-98)

COMPLIANCE STATEMENT

This statement relates to a proposed contract
with _____

(Name of borrower or grantee)

who expects to finance the contract with assistance from either the Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), or the Rural Utilities Service (RUS) or their successor agencies, United States Department of Agriculture (whether by a loan, grant, loan insurance, guarantee, or other form of financial assistance). I am the undersigned bidder or prospective contractor. I represent that:

1. I have, have not, participated in a previous contract or subcontract subject to Executive Order 11246 (regarding equal employment opportunity) or a preceding similar Executive Order.
2. If I have participated in such a contract or subcontract, I have, have not, filed all compliance reports that I have been required to file in connection with the contract or subcontract.

If the proposed contract is for \$50,000 or more and I have 50 or more employees, I also represent that:

3. I have, have not, previously had contracts subject to the written affirmative action program requirements of the Secretary of Labor.
4. If I have participated in such a contract or subcontract, I have, have not, developed and placed on file at each establishment affirmative action programs as required by the rules and regulations of the Secretary of Labor.

I understand that if I have failed to file any compliance reports that have been required of me, I am not eligible and will not be eligible to have my bid considered or to enter into the proposed contract unless and until I make an arrangement regarding such reports that is satisfactory to either the RHS, RBS, or RUS, or to the office where the reports are required to be filed.

I also certify that I do not maintain or provide for my employees any segregated facilities at any of my establishments, and that I do not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I certify further that I will not maintain or provide for my employees any segregated facilities at any of my establishments, and that I will not permit my employees to perform their services at any location, under my control, where segregated facilities are maintained. I agree that a breach of this certification is a violation of the Equal Opportunity clause in my contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. I further agree that (except where I have obtained identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that I will retain such certifications in my files; and that I will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods): (See Reverse).

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS
FOR
CERTIFICATIONS OF NON-SEGREGATED FACILITIES**

A certification of Nonsegregated Facilities, as required by the May 9, 1967, order (32F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually)

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

Date: _____
Signature of Bidder or Prospective Contractor

Address (including Zip Code)

U.S. DEPARTMENT OF AGRICULTURE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in This certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name(s) and Title(s) of Authorized Representative(s)

Signature(s)

Date

Instructions for Certification

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the reverse side in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principles. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly entered into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

RD Instruction 1940-Q
Exhibit A-1

CERTIFICATION FOR CONTRACTS, GRANTS AND LOANS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1.No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or Federal loan, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant or loan.

2.If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant or loan, the undersigned shall complete and submit Standard Form – LLL, “Disclosure of Lobbying Activities,” in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including contracts, subcontracts, and subgrants under grants and loans) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(Name)

(Date)

(Title)