

## **AGREEMENT BETWEEN CITY OF CLEARWATER AND DESIGN PROFESSIONAL**

### **TABLE OF ARTICLES**

1. AGREEMENT
2. GENERAL PROVISIONS
3. DESIGN PROFESSIONAL'S RESPONSIBILITIES
4. OWNER'S RESPONSIBILITIES
5. TIME
6. COMPENSATION AND PAYMENTS
7. INDEMNITY AND INSURANCE
8. TERMINATION
9. MISCELLANEOUS

### **ARTICLE 1 AGREEMENT**

This Agreement is made this [ ] Day of [ ] in the year [ ], by and between the OWNER, [ ]

and the

DESIGN PROFESSIONAL, [PBK ]

Tax identification number (TIN) [ ]

License Identification for the state of the Project [FL ]

for services in connection with the following

PROJECT [EDDIE C MOORE SPORTS COMPLEX ]

### **ARTICLE 2 GENERAL PROVISIONS**

#### **2.1 QUALIFICATIONS**

Design Professional represents that Design Professional and its consultants are duly qualified, licensed, registered, and authorized by law to perform the Services under this Agreement.

#### **2.2 RELATIONSHIP OF THE PARTIES**

Design Professional will cooperate and exercise the skill and judgment required above in performing Services. Design Professional represents that it possesses the skill, expertise, and licensing to perform the Services. The Parties each agree to work together in good faith and fair dealings, and shall take actions reasonably necessary to enable each other to perform this Agreement in a timely, efficient, and economical manner. Neither Design Professional nor any of its agents or employees shall act on behalf of or in the name of Owner except as provided in this Agreement or authorized in writing by Owner.

#### **2.3 SUBJECT TO THE STANDARD OF CARE**

Design Professional shall furnish or provide the architectural and engineering Services in accordance with Owner's requirements, as outlined in Owner's Program and other relevant data defining the Project, which are attached as Exhibit A. The Services shall include Basic Services plus any Additional Services, if any, authorized by Owner in this agreement. Services shall be performed in accordance with the standard of professional skill and care required by other professionals performing similar services for a project of similar size, location, scope, and complexity, during the time in which the Services are provided (the "Standard of Care").

#### **2.4 ETHICS**

The Parties shall each perform their obligations with integrity, so that, at a minimum each: (a) avoids conflicts of interest; and (b) promptly discloses to the other Party any conflicts of interest which may arise. Each party warrants to the other Party that it has not and shall not pay nor receive any contingent fees, gratuities, refunds, rebates, or other compensation to or from the other Party or any others to secure preferential treatment.

## 2.5 DEFINITIONS

2.5.1 "Agreement" means this "Agreement Between City of Clearwater and Design Professional," which is referred to herein as the Master Agreement, as well as the exhibits and attachments, the Owner's Program documents, and any subsequent Work Orders or other Amendments issued under this Master Agreement, all of which are made part of the Agreement upon execution.

2.5.1.1 The following exhibits are part of this Agreement:

- EXHIBIT A: Owner's Program;
- EXHIBIT B: Hourly rates charged to the Owner and a list of Reimbursable Expenses (this Exhibit does not apply to lump sum agreements).

Information regarding specific Project and Worksite information, Key Project Personnel, and Schedule of Worksite visits shall be detailed in Work Orders issued under this Agreement.

2.5.2 "Building Information Modeling" or "BIM" refers to an optional design technology that visualizes the Project or segments of the Project in at least three dimensions, and is intended to facilitate coordination among each of the Project stakeholders.

2.5.3 "Business Days" are all Days, except weekends and City holidays where the Project is located.

2.5.4 "Constructor" means the person or entity retained by Owner to perform Work for the Project.

2.5.5 "Consultant" is a person or entity that contracts with Design Professional to provide professional architectural, engineering, or other consulting services for this Project.

2.5.6 "Cost of Construction" means Owner's total cost of Project components. In the event the Project is not completed, Cost of Construction shall mean the final approved estimated cost of Project components.

2.5.7 "Day" means a calendar day.

2.5.8 "Design Professional" is the person or entity identified in ARTICLE 1 and includes Design Professional's representative.

2.5.9 "Environmental Site Assessment" or "ESA" includes any study performed for the purpose of identifying the probability, location, and extent of potential contamination or environmental hazards at the Worksite.

2.5.10 "Guaranteed maximum price" or "GMP" refers to a fixed dollar amount that limits the total possible costs of the Project encompassing both the Cost of Construction as well as any fees due to the Constructor. .

2.5.11 "Laws" mean federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Services and with which Design Professional must comply that are enacted as of the Agreement date.

2.5.12 "Not To Exceed" or "NTE" refers to the total maximum cost or amount that the Owner can be charged for Basic Services. Any time or expense relating to Basic Services that exceeds the NTE shall

be paid or absorbed by the Design Professional or its Consultants at no additional cost to Owner, regardless of whether the Agreement is billed lump sum or hourly.

2.5.13 "Others" refer to contractors, suppliers, and persons at the Worksite who are not employed by Constructor or Subcontractors.

2.5.14 "Owner" refers to the City of Clearwater, and includes Owner's Representative. In this agreement, "the City" can be used interchangeably with "the Owner."

2.5.15 "Owner's Program" refers to an initial description of Owner's objectives that shall include budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, site requirements, City codes and policies related to procurement and construction delivery, and any other documents included in the City's solicitations for the Project.

2.5.16 "Owner's Representative" refers to the consultant retained by the City to represent the City's interests in the Project, or the designated City official who is responsible for overseeing the Project.

2.5.17 "Parties" mean Owner and Design Professional collectively.

2.5.18 "Project," as identified in ARTICLE 1, is the building, facility, or other improvements to be designed by Design Professional for which Constructor is to perform Work under the agreement between Owner and Constructor. It may also include construction by Owner, or Others.

2.5.19 "Project Schedule" is the timeframe, measured in calendar Days, in which the Owner expects the Design Professional to complete all Construction Documents so that any required building permits will be issued to the Owner or to the Constructor as well as the construction of the Work up to final completion and acceptance by the Owner, if applicable.

2.5.20 "Rough Order of Magnitude" or "ROM" refers to the Owner and Design Professional's mutual and agreed understanding as to the acceptable range for the Cost of Construction. The Owner's Program may propose a ROM, which will be reviewed and, if acceptable, confirmed by the Design Professional, in writing, prior to commencing Schematic Design. The parties recognize and intend that the ROM mandates that final Cost of Construction and all monetary obligations of the City related to the Project must fall within +/- 75% of the ROM unless the Owner requires otherwise in a specific Work Order.

2.5.21 "Services" mean the services provided by Design Professional or by consultants retained by Design Professional for the Project, including coordination of design services of subcontractors who may be procured by Constructor or Subcontractors. The Services include Basic Services and Additional Services as may be authorized by Owner.

2.5.22 "Substantial Completion" means the Work (or a specified part thereof) has progressed to the point where, in the opinion of the Design Professional, as evidenced by the Design Professional's definitive certificate of Substantial Completion, is sufficiently complete, in accordance with the Agreement, so that the Work (or specified part) can be utilized for the purposes for which the City intended; or if no such certificate is issued, when the Work is complete and ready for final payment as evidenced by the Design Professional's recommendation of final payment. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

2.5.23 "Subcontractor" is a person or entity retained by Constructor as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include Design Professional or Others.

2.5.24 "Work" means the construction and services necessary or incidental to fulfill Constructor's obligations for the Project in conformance with the agreement between Owner and Constructor.

2.5.25 "Work Order" means a written outline of specific project details and tasks to be performed as well as the method of payment for said tasks. In the event of conflict between a Work Order and the Master Agreement, the Master Agreement shall govern. A Work Order shall only act to amend the terms of the Master Agreement when specifically stated in said Work Order that the intent is to amend this Master Agreement.

2.5.26 "Worksite" means the geographical area of the Project location as identified in ARTICLE 1 where the Work is to be performed.

## **ARTICLE 3 DESIGN PROFESSIONAL'S RESPONSIBILITIES**

### **3.1 GENERAL RESPONSIBILITIES**

#### **3.1.1 PROJECT REQUIREMENTS**

Prior to commencing compensated work, Design Professional shall review and preliminarily evaluate the Owner's Program described in Exhibit A. The Design Professional's acceptance of this Agreement shall constitute its professional opinion that in the absence of unreasonable delay by the Owner, the Construction Documents can generally be completed within the time-frame described within the Owner's Program, and that the Project is generally constructible within a ROM of the Owner's budget. If the Project Schedule or ROM are not available as part of the Owner's Program, the Design Professional shall prepare a Work Order that specifies a date for Substantial Completion and a ROM, which may be accepted or reject by the Owner. Once the Parties have agreed, the Design Professional shall perform so that design is constructible within the ROM.

#### **3.1.2 COST ESTIMATES AND PROFESSIONAL ADVICE**

As further described in Section 3.2, the Design Professional shall update the estimated Cost of Construction at the completion of Schematic Design Documents, and update the estimated Cost of Construction again at the completion of Design Development Documents. The Design Professional shall also update the estimated Cost of Construction upon completing the Construction Documents, unless the Owner and Constructor have already agreed to a GMP or lump sum to construct the Project. If at any time Design Professional's estimate exceeds Owner's most recently approved estimate, Design Professional shall recommend to Owner a range of options allowing the Project to proceed within the budget estimate most recently approved by the Owner. This paragraph shall not relieve the Design Professional of the obligation to design within the ROM as agreed upon by the Parties.

#### **3.1.3 PROJECT SCHEDULE**

The Design Professional shall use professional efforts to adhere to the Project Schedule or if the Project Schedule is not yet developed, Design Professional will provide a mutually agreeable schedule prior to commencement of any compensable design work. Designer shall notify Owner of any deviation from the Project Schedule and provide a recovery plan that shall be subject to Owner's written approval. The Project Schedule shall be updated for Owner's review and approval at the completion of Schematic Design Documents, Design Development Documents, and Construction Documents, except when construction commences before the completion of such Documents. If Constructor has been retained to provide preconstruction services as part of the Work, Design Professional shall coordinate and update the Project Schedule with the Schedule of the Work prepared by Constructor. Design Professional shall make appropriate recommendations if any Project Schedule shows a deviation from previously approved Project Schedules.

#### **3.1.4 ITERATIVE PROCESS**

Design Professional shall not proceed with the development of successive design documents until receiving written approval from Owner. Design Professional shall promptly revise without additional compensation:

3.1.4.1 those documents which have not been previously approved by Owner and which exceed the most recently approved ROM, unless the Owner agrees in writing to accept a higher Cost of Construction estimate;

3.1.4.2 those documents identified by Constructor as presenting constructability problems, regardless of whether the Owner has already accepted the design document(s); and

3.1.4.3 those documents needing revisions to reflect clarifications and assumptions and allowances on which a guaranteed maximum price is based. To the extent that any design documents approved by Owner deviate from the requirements of Owner's Program, the approved design documents shall govern.

### 3.1.5 WORK SITE ACCESS

The Owner shall ensure and provide the Design Professional with reasonable access to the Worksite at all times.

## 3.2 BASIC SERVICES

Design Professional's Basic Services include, at a minimum, the following:

3.2.1 SCHEMATIC DESIGN DOCUMENTS Based on Owner's Program, including any mutually agreed refinements or clarifications, Design Professional shall prepare one or more Schematic Design Documents under the following terms and conditions:

- Schematic Design Documents shall include drawings, outline specifications, and other documents illustrating the Project's basic elements, scale, and their relationship to the Worksite, and if applicable, shall include presentation documents such as artistic or photorealistic renders as necessary to describe the design concept options to the City Council for approval when required by the Owner's Program.
- If Owner elects to require certain sole source products or the use of specific vendors in procurement, Designer shall include and maintain a list of sole source products and specific vendors as specified by Owner.
- Schematic Design Documents shall include, as applicable, conceptual plans of the site and structures; preliminary sections and elevations; approximate areas, volumes, and dimensions; and preliminary selections of materials and systems. Designer shall confirm with Owner the level of detail required in said documents in the event that multiple concept options are required as part of the Owner's Program.
- One (1) reproducible set and one (1) electronic version (CAD files and PDF) of the Schematic Design Documents shall be provided to Owner.
- When Design Professional submits the Schematic Design Documents, the Design Professional shall update the Project Schedule and provide a new cost estimate. The Design Professional shall promptly notify the City in writing of any changes to either the Project Schedule or expected Cost of Construction.
- The Design Professional shall not proceed to Design Development unless and until the Owner, in its sole discretion, selects and confirms its approval of one or more Schematic Designs, including the new cost estimate and updated Project Schedule.
- Design Professional shall respond to all owner document review comments in writing, including detail that the comment was incorporated/addressed or reasons why the requested change was not incorporated. Upon receipt of the Schematic Design Documents, new cost estimate, and updated Project Schedule, the City shall (1) approve the updates, or (2) end the Agreement or cancel the Work Order, in which case the Design Professional shall be compensated for services rendered up to the point of termination or cancelation. If the compensation method is lump sum, the Owner shall pay a pro rata portion of the lump sum to compensate for Schematic Designs only.. If the Schematic Design Documents include no concept plans that are within the City's budget, the City may either instruct the Design Professional to revise or create new Schematic Design Documents aligning with the Owner's budget or end the Agreement or cancel the Work Order as applicable. If Owner elects to require a revision, the Design Professional shall revise or create a Schematic Design at no additional cost to the Owner in which the expected Cost of Construction conforms to the ROM.

3.2.2 DESIGN DEVELOPMENT DOCUMENTS If the Owner approves the Schematic Design Documents and updated estimate of the Cost of Construction and Project Schedule, the Design

Professional shall prepare, for Owner's review and approval, Design Development Documents under the following terms and conditions:

- If the Owner has hired or retained a CMAR to provide preconstruction services, the Design Professional shall collaborate in good faith with the CMAR in all matters relating to Design Development, value engineering, cost estimating, and the Project Schedule.
- The Design Development Documents shall further define the Project, including drawings and outline specifications fixing and describing the Project size, character, and site relationships, and other appropriate elements describing the structural, architectural, mechanical, and electrical systems.
- Design Development Documents shall include, as applicable, plans, sections, and elevations; criteria and sizing of major components; equipment sizes and capacities and approximate layouts, including required spaces and clearances; typical details; materials selections and general quality levels.
- Design Professional shall provide and maintain permit tracker software as specified by the Owner.
- When Design Professional submits Design Development Documents, Design Professional shall identify in writing all material changes and deviations that have taken place from the Schematic Design Documents and the previously approved estimate of the Cost of Construction and Project Schedule. Designer must identify any material selections and specifications that require a specific manufacturer or sole source and may limit competitive bids consistent with City procurement procedures and applicable laws. A Minimum of three manufacturers should be listed unless a smaller list is approved by the Owner.
- If requested by Owner, Design Professional shall prepare alternate bid documents.
- Unless documents are required to be transmitted in electronic form, two printed sets and one reproducible set of Design Development Documents shall be provided to Owner.

3.2.3 CONSTRUCTION DOCUMENTS Based on the approved Design Development Documents and updated estimate of the Cost of Construction and Project Schedule, Design Professional shall prepare and submit Construction Documents for review and approval by the Owner and any other permitting authorities, under the following terms and conditions:

- If the Owner has hired or retained a CMAR to provide preconstruction services, the Design Professional shall collaborate in good faith with the CMAR in all matters relating to the Construction Documents, cost estimating (if a GMP has not already been established), the Project Schedule, and permitting.
- The Construction Documents shall consist of signed and sealed documents, setting forth in detail the quality levels of and the requirements for construction of the Project. The signed and sealed documents shall include all drawings and specifications required by law and ordinance prior to or as a condition of issuing building permits and any other required permits.
- The Construction Documents shall describe all work necessary to bid and construct the Project.
- When Design Professional submits the Construction Documents, Design Professional shall identify in writing for Owner's approval all material changes and deviations that have taken place from the Design Development Documents and the previously approved estimate of the Cost of Construction and Project Schedule. Designer shall include a list of all approved sole source materials and/or vendors included in design or shall specify the applicable requirements for alternative "as equal" proposals that may be accepted when presented by the Constructor.
- Unless documents are required to be transmitted in electronic form, two printed sets and one reproducible set of the Construction Documents shall be provided to Owner.

3.2.4 BIDDING OR NEGOTIATION ASSISTANCE Design Professional shall assist Owner in obtaining bids or negotiated proposals from contractors by providing electronic documents including drawings, specifications, and any addendum, attending pre-bid and pre-award meetings, clarifying the scope and intent of the Construction Documents, and, if appropriate, evaluating proposed subcontractors and suppliers for portions of the Work. Design Professional shall issue any required addenda or clarifications promptly in writing.

3.2.4.1 If the lowest bona fide bid or negotiated Guaranteed Maximum Price ("GMP") exceeds the Design Professional's most recently prepared and approved estimate of the Cost of Construction as specified in the ROM, and the Owner elects to rebid or otherwise renegotiate the Project, then the Design Professional, without additional compensation, shall make the necessary modifications to the Construction Documents to reduce the Cost of Construction to an amount less than or equal to the sum of the most recently approved estimate of the Cost of Construction.

3.2.5 CONSTRUCTION PHASE SERVICES The Construction Phase will commence upon the issuance of a written Notice to Proceed from Owner to the Constructor to proceed with the Work, with contemporaneous notification to Design Professional. Design Professional shall (a) review and advise Owner as to the accuracy and sufficiency of the schedule of values submitted by Constructor for the Work, (b) coordinate the Project Schedule with the Schedule of the Work submitted by Constructor and approved by Owner, (c) prepare design documents in connection with change orders, (d) respond to Constructor requests for information, and (e) prepare alternate bid documents after completion of schematic design documents. Design Professional shall furnish to Owner and, if directed, to Constructor interpretations and clarifications of the drawings and specifications, by means of additional drawings, addenda, or otherwise, as are necessary for the proper execution and progress of the Work. All such interpretations and clarifications shall be consistent with the intent of the Construction Documents and reasonably inferable from them.

3.2.5.1 REQUESTS FOR INFORMATION ("RFI") AND SUBMITTALS Design Professional shall respond to Constructor's RFI's and review Constructor's submittals, including shop drawings, product data, and samples. Design Professional shall approve or make recommendations concerning such submittals to Owner within ten (10) Business Days of receiving the submittals from Constructor, unless mutually agreed otherwise by Design Professional, Constructor, and Owner. Design Professional shall check Constructor's submittals for conformance with the design and the scope of the Project and for compliance with the Construction Documents, and shall notify Owner of any material discrepancy or incomplete submittal. Design Professional's review shall not extend to Constructor's means, methods, techniques, sequences, or procedures, unless such means, methods, techniques, sequences, or procedures have been specified by Owner or Design Professional.

3.2.5.2 Design Professional shall assist Owner in the evaluation and processing of Constructor's request for changes in the Work. Based on its evaluation, Design Professional shall make appropriate recommendations to Owner.

3.2.5.3 If applicable, Design Professional shall visit the Worksite at appropriate intervals, as specified in the relevant exhibit or Work Order to become generally familiar with the quality of the Work and to determine in general if the Work is proceeding in accordance with the Construction Documents. After each Worksite visit, Design Professional shall promptly provide Owner with a written report. If Design Professional becomes aware of any defects or deficiencies in the Work, or failure of the Work to progress in conformity with the Schedule of the Work, Design Professional shall provide prompt notice, followed by written confirmation, to Owner. If, in Design Professional's opinion, special testing or inspection of the Work is needed, Design Professional shall recommend to Owner such testing or inspection procedures and appropriate consultants. Design Professional shall not be responsible for construction means, methods, techniques, sequences, and procedures, unless they are specified by Design Professional, or for ensuring that the Work is in accordance with the Construction Documents.

3.2.5.4 Design Professional shall attend meetings with Owner and Constructor upon reasonable request of Owner. The number of required meetings may be specified in the Owner's Program or in a Work Order issued under this Agreement.

3.2.5.5 Design Professional shall assist Owner in conducting inspectionsto determine the date or dates of Constructor's Substantial Completion of the Work. Such assistance shall include compiling a list of items to be completed or corrected so that Owner may occupy

or utilize the Work or a designated portion for its intended use, without unscheduled disruption.

3.2.5.6 Design Professional shall assist Owner in conducting inspections to determine Constructor's final completion of the Work.

3.2.5.7 If requested by Owner, Design Professional shall make up to two (2) visits to the Worksite during Constructor's one-year correction period to assist Owner in evaluating the need for any corrective measures and/or as required by any applicable warranty. Design Professional shall review commissioning reports during this period to ensure equipment and any other work as applicable is performing to design specifications.

3.2.5.8 Design Professional shall prepare record drawings from marked-up prints, drawings, or other documents that incorporated changes made during the Construction Phase.

3.2.6 Except as otherwise provided in this Agreement, Design Professional hereby grants a license to use design and construction documents prepared by Design Professional to those retained by Owner or Constructor to perform construction services for the Project.

3.3 ADDITIONAL SERVICES The following Services, if and to the extent selected by an "x", shall be provided by Design Professional and paid for as Additional Services:

3.3.1  Surveys and related matters involving the identification or examination of property boundaries, ownership, easements, or topography, e.g. legal descriptions, ALTA surveys, or aerial photographs;

3.3.2  Environmental site assessments required by law or requested by the Owner;

3.3.3  Geotechnical analysis of any kind, including soils or the exploration of subsurface utilities;

3.3.4  Preparing measured drawings of existing conditions in anticipation of renovating existing buildings or existing facilities;

3.3.5  Traffic study or studies required by ordinance or requested by the Owner;

3.3.6  Landscape architecture;

3.3.7  Photovoltaic ("PV") design services and coordination of install, e.g. solar panels; and

3.3.8  BIM – which, if selected, will be governed by its own addendum and exhibit, or shall be specified with detail in the Work Order:

3.3.9  Artistic renderings, models, or mockups of the Project or any part of the Project;

3.3.10  Inventories of existing furniture, fixtures, furnishings, and equipment which might be under consideration for incorporation into the Project;

3.3.11  Interior design and related services, including procurement and placement of new furniture, new furnishings, new artwork, and new decorations;

3.3.12  Pursuing Leadership in Energy and Environmental Design "LEED" certification or recognition;

3.3.13  Attend, present, and answer questions at public meetings held by government agencies, homeowners associations, civic groups, or other community stakeholder meetings identified by the Owner;

3.3.14  Any material revisions to the Schematic Design, Design Development, or Construction Documents after the respective phase was approved by the Owner, unless the Design Professional's actions, or negligence created the need for revisions, or the revisions constitute Basic Services under Section §3.2.4.14 of this Agreement, or the revisions are needed to provide clarification or supplemental details for Constructor such as an architect's or engineer's supplemental instruction

3.3.15  Design, coordination, management, expediting, and other services supporting the procurement of materials to be obtained or work to be performed by Owner, including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems, and other specialty systems which are not otherwise required by this Agreement;

3.3.16  Consultations and representations before governmental authorities if the duration or extent of said service exceeds the ordinary and customary process(es) of securing permits required by law or ordinance;

3.3.17  Worksite visits in excess of the number of visits provided for in the Work Order or or the number of visits in a schedule established by attachment to this Agreement;

3.3.18  Evaluation of payment applications. If this box is selected, the Design Professional will assist Owner in evaluating Constructor's applications for payment, including recommending approval or denial. If this Additional Service is selected, Design Professional shall certify to Owner the amounts due Constructor and that the Work has progressed to the point indicated in the payment application based on the schedule of values submitted by Constructor. The Design Professional shall use professional skill and care when evaluating the Constructor's applications, but the certification for payment shall not by itself constitute a representation that the Design Professional has evaluated the quality or quantity of the Work, or the construction means, methods, techniques, sequences, or procedures used by the Constructor in furthering the Work;

3.3.19  Performing formal commissioning services;

3.3.20  Document reproduction exceeding the limits provided for under §3.2;

3.3.21  Estimates, proposals, appraisals, consultations, negotiations, and services in connection with the repair or replacement of an insured loss;

3.3.22  Serving or preparing to serve as an expert witness in connection with any legal proceeding in which the Design Professional is not a party.

The manner of payment and total cost of all selected Additional Services shall be negotiated and documented as required by Article 6 of this Agreement. The lump sum cost of each line item, or its hourly rate and NTE, shall be documented in a Work Order or shall be consistent with the Schedule of Fees attached as Exhibit B.

3.4 CONSULTANTS Design Professional shall notify the Owner at least ten (10) days prior to engaging consultants. Said engagement shall not be deemed to create any contractual relationship between Owner and any such consultant, but the Owner shall be considered the intended third-party beneficiary of the performance of their services. Except for the waivers required under **§Error! Reference source not found.** and **§Error! Reference source not found.**, Design Professional shall not include any limits of liability in its agreements with any Consultants without the prior written approval of Owner. Design Professional shall bind its Consultants in the same manner as Design Professional is bound to Owner under this Agreement.

3.5 DESIGN PROFESSIONAL'S REPRESENTATIVE Design Professional's representative shall be specified in the Work Order as part of Key Project Personnel, who shall possess full authority to receive and act on instructions from Owner, in accordance with this Agreement. If Design Professional changes its

representative or the representative's authority, Design Professional shall immediately notify Owner in writing.

**3.6 KEY PROJECT PERSONNEL** The key Project personnel whom Design Professional shall assign and their anticipated time percentage each shall devote to Design Professional's Services shall be set forth in a Work Order or provided in writing to the City for approval prior to commencing any compensable work. Such personnel shall not be changed without the written approval of Owner, which approval shall not be unreasonably withheld.

**3.7 ROYALTIES, PENALTIES, AND COPYRIGHTS** Design Professional shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by Design Professional and incorporated in the design or construction documents prepared by Design Professional. Design Professional warrants that it possesses the copyright or permission to use the copyright of materials, methods, or systems selected by Design Professional and incorporated in the design or construction documents prepared by Design Professional. Design Professional shall defend, indemnify, and hold Owner, Constructor, and Subcontractors harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection.

## **ARTICLE 4 OWNER'S RESPONSIBILITIES**

### **4.1 FINANCIAL INFORMATION**

Prior to commencement of Services, and thereafter, Design Professional shall have the right, upon written request, to receive from Owner evidence of Owner's financial ability to pay for Design Professional's Services. Evidence of Owner's financial ability to pay for Services shall be a condition precedent to Design Professional commencing or continuing Services. Design Professional shall be notified prior to any material change in Owner's ability to pay for Services.

### **4.2 INFORMATION AND SERVICES PROVIDED BY OWNER**

The Owner is not required to obtain or possess any of the information or services described in this Section 4.2. However, to the extent the Owner has obtained or does obtain the information or services, the Owner shall provide them to Design Professional with reasonable promptness. Unless otherwise limited by Owner in writing, Design Professional shall be entitled to rely on the accuracy of such information and services:

4.2.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports, and investigations all in reasonable detail and as set forth in Exhibit A;

4.2.2 inspection reports and testing services conducted during construction as required by law or as mutually agreed;

4.2.3 unless otherwise provided in this Agreement, documentation evidencing any necessary approvals, site plan review, rezoning, easements and assessments, fees, and charges required for the construction, use, occupancy, or renovation of permanent structures.

4.2.4 Owner shall promptly report to Design Professional errors, inconsistencies, and omissions it discovers in the Construction Documents; however, nothing in this subsection shall relieve Design Professional of responsibility for its own errors, inconsistencies, and omissions.

4.2.5 Approvals by Owner shall not be deemed to be an assumption of responsibility by Owner for any error, inconsistency, or omission in the drawings and specifications or other documents prepared by Design Professional, its employees, agents, or consultants. Owner shall provide all approvals required under this Agreement in a timely manner.

**4.3 OWNER'S REPRESENTATIVE** Owner's representative shall be the Director of the City Department that is managing the Project, or his or her designee, which may be an employee or a third-party Consultant. The Representative shall be fully acquainted with the Project; agrees to furnish the information and services required of Owner pursuant to §4.2 in a timely manner; and shall have authority to bind Owner in matters

requiring Owner's approval, authorization, or written notice, but may not change this Agreement Between City of Clearwater and Design Professional, as modified by the Parties. If Owner changes its representative or their authority, Owner shall immediately notify Design Professional in writing.

## ARTICLE 5 TIME

**5.1 TIME FOR SERVICES** Time is of the essence. Subject to the Standard of Care, the Design Professional shall provide the Services required by this Agreement in a timely manner and in conformance with the Project Schedule. The Project Schedule can be modified with the Owner's consent pursuant to the protocols described in Section 3.2 of this Agreement. However, the Owner's approval of a delayed or modified Project Schedule shall not increase the compensation owed to the Design Professional, except as provided in Section 5.3 of this Agreement.

**5.2 DELAYS BY DESIGN PROFESSIONAL** If the progress or completion of the Project is delayed by reason of any error, inconsistency, or omission of Design Professional which violates its Standard of Care, Design Professional shall compensate Owner for and indemnify it against all damages that may accrue as a result of such delay. In addition, Design Professional shall provide Services at its own cost, including any overtime costs and expenses, required to make up time lost to Owner because of such delay. Owner shall provide prompt written notice to Design Professional of such delay after Owner first recognizes the delay.

**5.3 DELAYS BY OWNER** If Design Professional is delayed in the performance of its Services by any act or omission of Owner, or by changes ordered by Owner which are due to causes beyond Design Professional's control, then the time allotted in the Project Schedule for Design Professional's Services shall be extended for the period of such delay. In such instance(s), the Design Professional shall provide prompt written notice to Owner of such delay after Design Professional first recognizes such delay. The Owner shall, upon request by the Design Professional, consider an equitable adjustment in compensation to the extent that said adjustment is attributable to the Owner's delay as defined in this Section 5.3.

## ARTICLE 6 COMPENSATION AND PAYMENTS

### 6.1 COMPENSATION FOR BASIC SERVICES

For Basic Services as described in §3.1 and §3.2, Owner shall compensate Design Professional on the following basis (designate only one of the following options):

- Stipulated or Lump Sum Fee. The amount of One Million Four Hundred Thirty Thousand One Hundred Forty Nine dollars (\$1,430,149). This amount equals % percentage of the preliminary budget estimate.
- Hourly with NTE Fee. The actual cost of the sum of the following, up to a maximum of [insert NTE amount]:
  - a. Design Professional's personnel at the hourly rates listed in Exhibit B.
  - b. Services of consultants and subcontractors at a multiple of [ ] ([ ]) times the amount billed to Design Professional for such services.
  - c. Reimbursable Expenses incurred in connection with Basic Services.

Regardless of which method is chosen, the lump sum or NTE shall not be modified for any reason except those recognized in Sections 5.3 or 6.3 of this Agreement. For the avoidance of doubt, neither an increase nor a decrease in the Owner's project budget or expected Cost of Construction shall affect the amount owed, except as otherwise authorized by this Agreement.

### 6.2 COMPENSATION FOR ADDITIONAL SERVICES

6.2.1 In addition to the compensation described in Section 6.1 of this Agreement, the Design Professional shall be compensated for any Additional Services selected by the Owner pursuant to Section §3.3 of this Agreement. Each selected Additional Service shall be documented as a separate line item and paid as either a lump sum or Hourly with NTE. The amount of said compensation shall be documented by an exhibit or Work Order. The manner and timing of such compensation shall occur pursuant to Section 6.3 of this Agreement.

### 6.3 PAYMENTS

6.3.1 Design Professional shall submit to Owner for its approval monthly applications for payment for Basic and Additional Services and Reimbursable Expenses, if any, with reasonable supporting detail. Owner shall pay or deny payment applications in the manner and timing required by Florida's Local Government Prompt Payment Act.

6.3.2 Prior to final payment to Design Professional, Design Professional shall furnish evidence satisfactory to Owner that there are no claims, obligations, or liens outstanding in connection with its Services. Acceptance of final payment shall constitute a waiver of all claims by Design Professional for compensation for its Services.

6.3.3 Design Professional's expense records shall be maintained in accordance with generally accepted accounting principles and shall be available to Owner at mutually convenient times for all Services to be compensated on the basis of actual cost.

## ARTICLE 7 INDEMNITY AND INSURANCE

### 7.1 INDEMNITY

7.1.1 To the fullest extent permitted by law, Design Professional shall indemnify and hold harmless the City, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the design professional and other persons employed or utilized by the design professional in the performance of this Agreement.

7.1.2 Design Professional shall not be responsible for the acts or omissions of Owner, Constructor, and Subcontractors, and their respective agents or employees, or any other persons or entities performing work on the Project other than those included in Section 7.1.1.

### 7.2 INSURANCE

#### 7.2.1 PROFESSIONAL LIABILITY INSURANCE

Before commencing its Services and as a condition of payment, Design Professional shall maintain at its own cost and expense Professional Liability Insurance and other applicable insurance coverages through a company that is satisfactory to Owner, whose approval shall not be unreasonably withheld, for claims arising under this Agreement. Specific Policies and Coverage amounts shall be stated by the Owner as part of the Owner's Program or as otherwise required by City code, practice and procedure.

7.2.2 Design Professional shall furnish to Owner certificates of insurance evidencing the required coverage listed in this section and a copy of its policy. No policy shall be cancelled or modified without thirty (30) Days' prior written notice to Owner.

## ARTICLE 8 TERMINATION

8.1 TERMINATION BY EITHER PARTY Should either Party be in material breach of this Agreement, the other Party may give written notice to the breaching Party that it intends to terminate this Agreement for

default absent appropriate corrective action upon seven (7) Days from receipt. Upon such time and absent appropriate corrective action, the non-breaching party may terminate this Agreement in writing.

**8.2 TERMINATION BY OWNER FOR CONVENIENCE** Upon ten (10) Days' written notice, Owner may, without cause, terminate this Agreement with Design Professional. If this Agreement is terminated pursuant to this section, Design Professional may recover from Owner payment for Services performed up through the date on which the Design Professional receives the Owner's notice of intent to terminate. To the extent that specific Basic Services or specific Additional Services were either partially performed or in progress as of the date on which the termination notice is delivered, the Owner shall compensate the Design Professional as if the in-progress Basic Service(s) or in-progress Additional Service(s) had been fully performed or shall compensate for actual services rendered, plus ten percent (10%) whichever is lower. The Design Professional shall identify in writing with reference to this Agreement or the applicable Work Order, which specific services were in progress in order to request this compensation, and provide the Owner the option of requesting the specific service be completed prior to requesting compensation pursuant to this paragraph. Additional compensation for partial performance pursuant to this paragraph shall be treated as liquidated damages, and in no event shall the Owner incur any further liability to the Design Professional after paying this sum.

## **ARTICLE 9 MISCELLANEOUS**

**9.1 OWNERSHIP OF TANGIBLE DOCUMENTS** Owner shall receive ownership of the property rights, including copyrights, of all documents, drawings, specifications, electronic data, and information ("Documents") prepared, provided, or procured by Design Professional or by consultants retained by Design Professional and distributed to Owner for this Project, upon making the final payment to Design Professional or in the event of termination under ARTICLE 8, upon payment for all sums due to Design Professional under ARTICLE 8. Owner's acquisition of the copyright shall be subject to Owner's making of all payments required by this Agreement.

**9.1.1 DESIGN PROFESSIONAL'S USE OF DOCUMENTS** Notwithstanding Section 9.1 of this Agreement, Design Professional may reuse Documents prepared by it pursuant to this Agreement in its practice, but only upon written request to and written permission granted by the Owner. Said permission shall not be unreasonably withheld.

**9.2 SCRUTINIZED COMPANIES AND BUSINESS OPERATIONS WITH CUBA AND SYRIA CERTIFICATION FORM AND ISRAEL CERTIFICATION FORM** Pursuant to Section 287.135, Florida Statutes, any vendor, company, individual, principal, subsidiary, affiliate, or owner on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations in Cuba or Syria, is ineligible for, and may not bid on, submit a proposal for, or enter into or renew a contract with the City of Clearwater for goods or services for an amount equal to or greater than one million (\$1,000,000.00) dollars. Any vendor, company, individual, principal, subsidiary, affiliate, or owner on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, is ineligible for, and may not bid on, submit a proposal for, or enter into or renew a contract with the City of Clearwater for goods or services for ANY amount.

Each entity submitting a bid, proposal, or response to a solicitation must certify to the City of Clearwater that it is not on the aforementioned lists, or engaged in business operations in Cuba or Syria, or engaged in a boycott of Israel at the time of submitting a bid, proposal or response, in accordance with Section 287.135, Florida Statutes. Business Operations means, for purposes specifically related to Cuba or Syria, engaging in commerce in any form in Cuba or Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce. Boycott Israel or boycott of Israel means refusing to deal, terminating business activities, or taking other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner. A statement by a company that it is participating in a boycott of Israel, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of, calls for a boycott of Israel, may be considered as evidence that a company is participating in a boycott of Israel.

The certification forms (the Certification) are attached hereto, and must be submitted, along with all other relevant contract documents, at the time of submitting a bid, proposal, or response. Failure to provide the Certification may deem the entity's submittal non-responsive. If the City of Clearwater determines that an entity has submitted a false certification form, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List, or engaged in business operations in Cuba or Syria, or engaged in a boycott of Israel, then the contract may be terminated at the option of the City of Clearwater. Other than the submission of a false certification, the City of Clearwater, on a case-by-case basis and in its sole discretion, may allow a company to bid on, submit a proposal for, or enter into or renew a contract for goods or services, if the conditions set forth in Section 287.135, Florida Statutes, apply. The City retains the right to pursue civil penalties and any other applicable rights and remedies as provided by law for the false submission of the attached certification forms.

**9.3 PUBLIC RECORDS** The Design Professional will be required to comply with Chapter 119, Florida Statutes, regarding public records.

**IF THE DESIGN PROFESSIONAL HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS:**

Rosemarie Call, phone: 727-562-4092 or Rosemarie.Call@myclearwater.com, 600 Cleveland Street, Suite 600, Clearwater, FL 33755.

**9.4 EXTENT OF AGREEMENT** Except to the extent expressly provided in this Agreement, this Agreement represents the entire and integrated agreement between Owner and Design Professional and supersedes all prior negotiations, representations, and agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of Owner and Design Professional and not for the benefit of any third party.

**9.5 ASSIGNMENT** Except as provided in this paragraph, neither Owner nor Design Professional shall assign its interest in this Agreement without the written consent of the other Party. However, the Owner may in its sole discretion assign the Agreement to another local government entity in Florida, and the Design Professional may in its sole discretion assign its right to receive its proceeds.

**9.6 GOVERNING LAW AND VENUE** The laws of the State of Florida and the ordinances of the City of Clearwater shall govern this Agreement. Venue for any dispute or claim involving this Agreement shall be found in Pinellas County or, in the event of a federal lawsuit, the Middle District of Florida.

**9.7 NOTICE** Unless changed in writing, a Party's address indicated in Article 1 shall be used when delivering notice to a physical address. Except for agreement termination, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

**9.8 NO WAIVER OF PERFORMANCE** Either Party's failure to insist upon any, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance.

**9.9 TITLES** The title given to the articles and sections are for ease of reference only and shall not be relied upon or cited for any other purpose.

**9.10 JOINT DRAFTING** The Parties expressly agree that this Agreement was negotiated by professionals and with the advice of, or opportunity to consult with, legal counsel. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

**[Signature Page to Follow]**

RFQ # 41-25 \_Design Services – Press Box and Sports Field at Eddie C Moore

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the day and year first written above.

CITY OF CLEARWATER, FLORIDA

ATTEST:

By: \_\_\_\_\_  
Bruce Rector, as its Mayor

\_\_\_\_\_  
Rosemarie Call, City Clerk

Approved as to Form:

(SEAL)

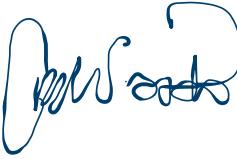
Jerrod Simpson, Senior Assistant City Attorney

DESIGN PROFESSIONAL: [PBK ]

BY: 

NAME: Steve Padgett

TITLE: Principal

WITNESS: 

NAME: Christy Woods

TITLE: Sr. Project Manager

END OF DOCUMENT