

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
OFFICE OF THE SUPERINTENDENT**

**Robert W. Runcie
Superintendent Of Schools**

Telephone: 754-321-2600

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March 16, 2018

TO: School Board Members

FROM: Leo Bobadilla
Chief Facilities Officer



VIA: Robert W. Runcie
Superintendent of Schools



SUBJECT: REVISIONS TO AGENDA ITEM JJ-3. FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENTS – VERSIONS 1-4 – MULTIPLE CONTRACTORS – MULTIPLE SCHOOLS – SMART PROGRAM RENOVATIONS, FOR THE MARCH 20, 2018 REGULAR SCHOOL BOARD MEETING

The following are revisions to Agenda Item JJ-3. First Amendment to Professional Services Agreements – Versions 1-4 – Multiple Contractors – Multiple Schools – SMART Program Renovations, for the March 20, 2018 Regular School Board Meeting:

- Exhibit 1 – replace with attached revised Exhibit 1
- Exhibit 5
 - Broadview ES - Replace Amendment with attached completed Amendment
 - Maplewood ES - Replace Amendment with attached completed Amendment

RWR/LB/SNM/RC:ma
Attachments

c: Senior Leadership Team

EXECUTIVE SUMMARY

**Amendment to Professional Services Agreements
Multiple Design Professionals
Multiple Projects
SMART Program Renovations**

PROJECT OVERVIEW:

Type of Contract:	Professional Services Agreements
Project Consultant:	Multiple Design Professionals
Notice to Proceed Date:	Pending Board Approval
Budget:	See Below

GENERAL OVERVIEW:

Background:

Professional Services Agreements (PSA) have been approved and executed under the SMART Program since June 21, 2016. Since then, there have been four (4) versions approved and executed. The below attached table illustrates the Designers currently under contract for each of the versions (V1, V2, V3, and V4) and the totality of the PSAs that are being amended by this action.

DESIGNER	NOV 30, 2015 Version 1 (V1)	MAY 11, 2016 Version 2 (V2)	MAR 01, 2017 Version 3 (V3)	AUG 28, 2017 Version 4 (V4)	Total
ACAI Associates, Inc.	0	2	0	0	2
BRPH Architects Engineers, Inc.	0	1	0	0	1
Cartaya and Associates Architects, P.A.	0	1	0	1	1
CES Engineering Services, LLC	0	2	0	0	3
Crain Atlantis Engineering, Inc.	5	1	0	0	6
CSA Central, Inc.	3	0	0	0	3
FICE Design, Inc.	4	4	0	0	8
Jorge A. Gutierrez Architect LLC	7	0	1	0	8
KVH Architects, P.A.	0	0	0	1	1
Laura M. Perez and Associates, Inc.	0	0	1	0	1
LIMCO Engineering, Inc.	0	0	3	1	4
LIVS Associates	0	3	0	0	3
M.C. Harry and Associates, Inc.	5	1	0	0	6
Nyarko Architectural Group, Inc.	5	0	1	0	6
Rodriguez Architects, Inc.	0	0	1	1	2
Silva Architects, LLC	0	0	1	0	1
Sol-Arch, Inc.	5	3	0	0	8
Song & Associates, Inc.	1	0	4	2	7
The Tamara Peacock Company Architects of Florida, Inc.	2	0	2	0	4
VIA Design Studio, LLC	0	3	1	0	4
Williamson Dacar Associates, Inc.	6	0	0	0	6
Wolfberg/Alvarez and Partners, Inc.	2	0	1	0	3
Total	45	21	16	6	88

The purpose of the Amendments to the Professional Services Agreements approved under PSA V1 dated November 30, 2015, from period starting June 21, 2016, through February 7, 2017, is to add new provisions under Article 1.3.2.12, revise Article 11.3.1.4.2, replace Article 12.10 in its entirety, and add new provisions to Article 4.1.12.

These Amendments are intended to improve the quality and clarity of the Agreements which arose subsequent to administration of these Professional Services Agreements. The impact of these changes are as follows:

- Article 1.3.2.12 – ADD – This language protects the District such that ANY unapproved item that appears in construction documents must be removed by the Consultant without compensation.
- Article 11.3.1.4.2 – REVISE – This language protects the District and the designers. As experience illustrates, the budget for the FLCC is typically less than what is actually needed to deliver the defined scope. This language provides clear options for the District and protection to the Consultant with respect to justifiable increases in effort, resulting in additional compensations.
- Article 12.10 – REPLACE – This language further clarifies that if the Owner causes the Consultant to modify CDs to meet the original FLCC, the Owner will negotiate additional compensations.
- Article 4.1.12 – ADD – This language requires the Consultant to utilize the Owner’s project software, *e-Builder*, at no cost to the Owner. This will ensure the Owner that records created by the Consultant will be entered in the Owner’s software system.

The purpose of the Amendment to the Professional Services Agreements approved under PSA V2 dated May 5, 2016, from period starting July 25, 2017, through February 21, 2018, is to add new provisions under Article 2.1.11.1, revise Article 2.4.3.4, replace Article 2.5.9 in its entirety, and add new provisions to Article 4.1.12.

These Amendments are intended to improve the quality and clarity of the Agreements which arose subsequent to administration of these Professional Services Agreements. The impact of these changes are as follows:

- Article 2.1.11.1 – ADD – This language protects the District such that ANY unapproved item that appears in construction documents must be removed by the Consultant without compensation.
- Article 2.4.3.4 – REVISE – This language protects the District and the designers. As experience illustrates, the budget for the FLCC is typically less than what is actually needed to deliver the defined scope.
- This language provides clear options for the District and protection to the Consultant with respect to justifiable increases in effort, resulting in additional compensations.
- Article 2.5.9 – REPLACE – This language further clarifies that if the Owner causes the Consultant to modify CDs to meet the original FLCC, the Owner will negotiate additional compensations.
- Article 4.1.12 – ADD – This language requires the Consultant to utilize the Owner’s project software, *e-Builder*, at no cost to the Owner. This will ensure the Owner that records created by the Consultant will be entered in the Owner’s software system.

The purpose of the Amendment to the Professional Services Agreements approved under PSA V3 dated March 3, 2017, and PSA V4 dated August 28, 2017, from period starting July 25, 2017 through February 21, 2018, is to add new provisions under Article 2.1.11.1, revise Article 2.4.4.6, replace Article 2.5.9 in its entirety, and add new provisions to Article 4.1.12. *Note: The content of the aforementioned Agreements (PSA V3 and PSA V4) is the same. The only difference is the approval date of each Agreement.*

These Amendments are intended to improve the quality and clarity of the Agreements which arose subsequent to administration of these Professional Services Agreements. The impact of these changes are as follows:

- Article 2.1.11.1 – ADD – This language protects the District such that ANY unapproved item that appears in construction documents must be removed by the Consultant without compensation.
- Article 2.4.4.6 – REVISE – This language protects the District and the designers. As experience illustrates, the budget for the FLCC is typically less than what is actually needed to deliver the defined scope. This language provides clear options for the District and protection to the Consultant with respect to justifiable increases in effort, resulting in additional compensations.

- Article 2.5.9 – REPLACE – This language further clarifies that if the Owner causes the Consultant to modify CDs to meet the original FLCC, the Owner will negotiate additional compensations.
- Article 4.1.12 – ADD – This language requires the Consultant to utilize the Owner’s project software, e-Builder, at no cost to the Owner. This will ensure the Owner that records created by the Consultant will be entered in the Owner’s software system.

There is no direct cost to the District as a result of these language changes. Any costs that would be incurred would have to be approved in a future amendment by the Board. The cost of *e-Builder* licenses is built into the Professional Services Agreement as a reimbursable expense (See Exhibits 2, 3, and 4 for redlined versions).

The Project Consultants have agreed to amend the articles proposed by the Owner (see table outlined on page 1 for details).

The Amendments to the Professional Services Agreements have been reviewed and approved as to form and legal content by the Office of the General Counsel.

**SECOND AMENDMENT
TO
PROFESSIONAL SERVICES AGREEMENT**

**BETWEEN
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA AND DESIGN
PROFESSIONAL FOR ARCHITECTURAL/ENGINEERING SERVICES**

This SECOND Amendment to the Professional Services Agreement ("**Agreement**") between The School Board of Broward County, Florida (hereinafter referred to as "**Owner**") and "M.C Harry and Associates, Inc." (hereinafter referred to as "**Design Professional**") for architectural/engineering services dated the 21st day of June, 2016, is entered into this 20th day of March, 2018 by and between the Owner and the Design Professional.

For the project known as: **Broadview Elementary School
Project No. P.001638
SMART Program Renovations
FLCC: \$1,231,220**

WHEREAS, the Owner and Design Professional acknowledge and agree that the Agreement between Owner and Design Professional dated the 21st day of June, 2016, is in full force and effect except to the extent this Second Amendment modifies specific provisions thereof; and

WHEREAS, it has been determined that it would be in the best business interest of the Owner to add new provisions under section 1.3.2.12, add new provisions under section 11.3.1.4.2, revise article 12.10 and add new provisions under section 4.1.12 as explained below; and

WHEREAS, the Design Professional has agreed to amend the articles proposed by the Owner from the Agreement,

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals.** The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.
2. **Amended Provisions.** The parties hereby agree to the following amended provisions to the Agreement:

A. **ADD** the following new provision:

1.3.2.12 Removal of Unapproved Items: The Design Professional shall, without additional compensation, modify the Construction Documents as necessary to remove scope items that are:

- 1.3.2.12.1 Not identified in the original Project Scope as set forth in Attachment 16;
- 1.3.2.12.2 Not identified in the Owner-approved Scope Validation Report (the "SVR"); or
- 1.3.2.12.3 Not required by Code in relation to the original Project Scope or SVR.

B. **ADD** new Article 11.3.1.4.2 of PSA Attachment #2 as follows:

11.3.1.4.2 The Design Professional shall make best efforts to design the project to be within the Fixed Limit of Construction Cost (the "FLCC") established by Owner. If the Design Professional can demonstrate that it is unable to design the project to be within the FLCC, the Owner, in its sole discretion, may either increase the FLCC, direct the Design Professional to modify and/or revise the Project Scope to bring the project within the FLCC, or cancel the project. If the Owner directs the Design Professional to modify and/or revise the project scope, the Owner shall negotiate additional compensation to be paid to the Design Professional for such services.

C. **REPLACE** Article 12.10 of PSA Attachment #2 in its entirety as follows:

Under Article 12.9.3 above, if exercised by Owner, the Design Professional shall modify the Construction Documents as necessary to bring the project within the original or revised Fixed Limit of Construction Cost (FLCC), as established by Owner. Owner shall negotiate additional compensation to be paid to the Design Professional for such services.

D. **ADD** new Article 4.1.12 as follows:

4.1.12 The Design Professional shall be required to use Owner's Project Management software, e-Builder. One (1) license will be distributed to Design Professional, at cost to Owner, which will allow access into e-Builder for one or multiple projects as awarded by Owner. Usage of this license will be provided throughout the duration of the project(s). Based on availability, additional licenses may be provided as needed.

3. **Order of Precedence Among Agreement Documents.** In the event of conflict between the provisions of the Agreement and the provisions contained herein, the provisions of the following documents shall take precedence in this order:
 - a) This Second Amendment to Agreement;
 - b) The First Amendment; and
 - c) The Agreement.
4. **Other Provisions Remain in Force.** Except as expressly provided herein, all other portions of the Agreement, as may have been previously amended, remain in full force and effect.
5. **Authority:** Each person signing this Second Amendment on behalf of either party warrants that he or she has full legal power to execute this Second Amendment on behalf of the party for whom he or she is signing it to bind and obligate such party with respect to all provisions contained in this Second Amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Second to be executed and their Corporate Seal affixed by and through their proper offices, thereunto duly authorized on this day and year first above written.

For The School Board of Broward County, Florida


(SEAL)

**ATTEST THE SCHOOL BOARD OF
BROWARD COUNTY, FLORIDA**

Robert W. Runcie
Superintendent of Schools

Nora Rupert, Chair

Approved as to Form and Legal Content:

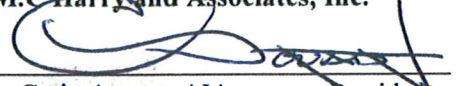


Office of the General Counsel


DESIGN PROFESSIONAL

ATTEST

M.C Harry and Associates, Inc.



Craig Aquart, AIA, President



Lourdes Solera, FAIA, Secretary



AR 14445
Design Professional's
Registration Number

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 8 day of January, 2018 by
Craig Aquart of MCHARRY ASSOC on behalf of the corporation or agency.

He/she is personally known to me or produced _____ as
Identification and did/did not first take an oath.

My commission expires:

(SEAL)





Signature, Notary Public

Jackie Ibarraga

Printed Name of Notary

FF 107385

Notary's Commission

**SECOND AMENDMENT
TO
PROFESSIONAL SERVICES AGREEMENT**

BETWEEN
THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA AND DESIGN
PROFESSIONAL FOR ARCHITECTURAL/ENGINEERING SERVICES

This SECOND Amendment to the Professional Services Agreement ("Agreement") between The School Board of Broward County, Florida (hereinafter referred to as "Owner") and "M.C Harry and Associates, Inc." (hereinafter referred to as "Design Professional") for architectural/engineering services dated the 21st day of June, 2016, is entered into this 20th day of March, 2018 by and between the Owner and the Design Professional.

For the project known as: **Maplewood Elementary School
Project No. P.001639
SMART Program Renovations
FLCC: \$1,520,754**

WHEREAS, the Owner and Design Professional acknowledge and agree that the Agreement between Owner and Design Professional dated the 21st day of June, 2016, is in full force and effect except to the extent this Second Amendment modifies specific provisions thereof; and

WHEREAS, it has been determined that it would be in the best business interest of the Owner to add new provisions under section 1.3.2.12, add new provisions under section 11.3.1.4.2, revise article 12.10 and add new provisions under section 4.1.12 as explained below; and

WHEREAS, the Design Professional has agreed to amend the articles proposed by the Owner from the Agreement,

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals.** The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

2. **Amended Provisions.** The parties hereby agree to the following amended provisions to the Agreement:

A. **ADD** the following new provision:

1.3.2.12 **Removal of Unapproved Items:** The Design Professional shall, without additional compensation, modify the Construction Documents as necessary to remove scope items that are:

- 1.3.2.12.1 Not identified in the original Project Scope as set forth in Attachment 16;
- 1.3.2.12.2 Not identified in the Owner-approved Scope Validation Report (the "SVR"); or
- 1.3.2.12.3 Not required by Code in relation to the original Project Scope or SVR.

B. **ADD** new Article 11.3.1.4.2 of PSA Attachment #2 as follows:

11.3.1.4.2 The Design Professional shall make best efforts to design the project to be within the Fixed Limit of Construction Cost (the "FLCC") established by Owner. If the Design Professional can demonstrate that it is unable to design the project to be within the FLCC, the Owner, in its sole discretion, may either increase the FLCC, direct the Design Professional to modify and/or revise the Project Scope to bring the project within the FLCC, or cancel the project. If the Owner directs the Design Professional to modify and/or revise the project scope, the Owner shall negotiate additional compensation to be paid to the Design Professional for such services.

C. **REPLACE** Article 12.10 of PSA Attachment #2 in its entirety as follows:

Under Article 12.9.3 above, if exercised by Owner, the Design Professional shall modify the Construction Documents as necessary to bring the project within the original or revised Fixed Limit of Construction Cost (FLCC), as established by Owner. Owner shall negotiate additional compensation to be paid to the Design Professional for such services.

D. **ADD** new Article 4.1.12 as follows:

4.1.12 The Design Professional shall be required to use Owner's Project Management software, e-Builder. One (1) license will be distributed to Design Professional, at cost to Owner, which will allow access into e-Builder for one or multiple projects as awarded by Owner. Usage of this license will be provided throughout the duration of the project(s). Based on availability, additional licenses may be provided as needed.

3. **Order of Precedence Among Agreement Documents.** In the event of conflict between the provisions of the Agreement and the provisions contained herein, the provisions of the following documents shall take precedence in this order:
 - a) This Second Amendment to Agreement;
 - b) The First Amendment; and
 - c) The Agreement.
4. **Other Provisions Remain in Force.** Except as expressly provided herein, all other portions of the Agreement, as may have been previously amended, remain in full force and effect.
5. **Authority:** Each person signing this Second Amendment on behalf of either party warrants that he or she has full legal power to execute this Second Amendment on behalf of the party for whom he or she is signing it to bind and obligate such party with respect to all provisions contained in this Second Amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Second to be executed and their Corporate Seal affixed by and through their proper offices, thereunto duly authorized on this day and year first above written.

For The School Board of Broward County, Florida

(SEAL)

**ATTEST THE SCHOOL BOARD OF
BROWARD COUNTY, FLORIDA**

Robert W. Runcie
Superintendent of Schools

Nora Rupert, Chair

Approved as to Form and Legal Content:

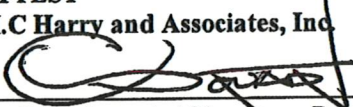


Office of the General Counsel


[DESIGN PROFESSIONAL]

ATTEST

M.C Harry and Associates, Inc.



Craig Aquart, AIA, President



Lourdes Solera, FAIA, Secretary



AR 14445

Design Professional's
Registration Number

STATE OF FLORIDA
COUNTY OF BROWARD


The foregoing instrument was acknowledged before me this 8 day of January, 2018 by
Craig Aquart of MC Harry & Assoc on behalf of the corporation or agency.

He/she is personally known to me or produced _____ as
Identification and did/did not first take an oath.

My commission expires:

(SEAL)





Signature, Notary Public
Jackie Ibinarriga
Printed Name of Notary

FF 107385

Notary's Commission