



**CONTRACT FOR
PROFESSIONAL SERVICES**

BETWEEN

THE SCHOOL BOARD OF BREVARD COUNTY, FLORIDA
2700 Judge Fran Jamieson Way
Viera, Florida 32940-6601

hereinafter referred to as the Owner

AND

Gale Associates, Inc.
160 North Westmonte Drive, Suite 1200
Altamonte Springs, Florida 32714

hereinafter referred to as the Professional Consultant

**PROJECT: Design Services for Roof Renewal/Replacement at Apollo Elementary,
Imperial Estates Elementary and South Lake Elementary**

CONTINUING CONTRACT FOR PROFESSIONAL SERVICES

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**CONTINUING CONTRACT FOR
PROFESSIONAL SERVICES**

This **AGREEMENT** is as of the date of Board Approval,

Between the Owner: **The School Board of Brevard County, Florida**
2700 Judge Fran Jamieson Way
Viera, Florida 32940-6601

and the Professional Consultant: **Gale Associates, Inc.**
160 North Westmonte Drive, Suite 1200
Altamonte Springs, Florida 32714

For Professional Services in connection with the Project known as:

Design Services for Roof Renewal/Replacement at South Lake Elementary, Apollo Elementary, and Imperial Estates Elementary.

The Owner and the Professional Consultant agree as set forth below:

ARTICLE 1

DEFINITIONS

The following words and phrases where appearing in initial capitalization, shall for the purposes of this Agreement have the following meanings:

- 1.1 Additional Services. Additional Services shall consist of the professional services agreed to be performed by the Professional Consultant in connection with the Project but which are not specifically designated as Basic Services in Exhibit A.
- 1.2 Additional Services Compensation. Additional Services Compensation shall be the fees determined in accordance with Article 7 to be paid by the Owner to the Professional Consultant in connection with the performance of Additional Services.
- 1.3 Basic Services. Basic Services shall consist of the professional services as indicated and specifically designated in Exhibit A to be performed and provided by the Professional Consultant under this Agreement in connection with the Project.
- 1.4 Basic Services Compensation. Basic Services Compensation shall be the fee designated in Article 4 to be paid by the Owner to the Professional Consultant in connection with the performance of the Basic Services by the Professional Consultant.
- 1.5 Construction Contract Documents. The Construction Contract Documents shall mean all design documents provided by the Professional Consultant for use in construction of the Project, performing the Work and the rendering of the Project fully operational. Such documents shall include, but not be limited to the plans, project manual and specifications prepared by the Professional Consultant, and any addenda and change orders thereto, and the Owner-Contractor Agreement.

- 1.6 Contractor. The Contractor is the person or entity which enters into an agreement with the Owner to perform the construction of or any construction related to the Project including, without limitation, the providing of labor, materials, and equipment incorporated or to be incorporated into the Project. The term "Contractor" means the General Contractor, Construction Manager or Design Builder or its authorized representative.
- 1.7 Design Services. Design Services means any and all professional design services required to be performed by the Professional Consultant. All labor, materials, supervision, equipment, computers, documents and all other things necessary for the performance of such services including subconsultants shall be included.
- 1.8 Design Standards. Most recent edition of the "Owner's Design Standards," including any partial updates as may be directed by the Owner.
- 1.9 Owner and Owner's Representative. The Owner is the School Board of Brevard County. The Owner shall designate a representative authorized to act in the Owner's behalf with respect to the Project.
- 1.10 Professional Consultant. The professional design consulting firm and its employees and subconsultants engaged by the Owner through this Agreement to provide professional design services as may be directed by the Owner throughout the term of the Agreement.
- 1.11 Project. Project shall mean projects at selected facilities determined by the Owner that require the services as described in Exhibit A. All or part of these services may be required and will be determined by the Owner and stated in writing before any work is performed.
- 1.12 Project Assignment. Project Assignment means a directive to the Professional Consultant by the Owner to prepare a proposal for professional services relative to a specific Project, which, upon acceptance by the Owner, shall be incorporated into this Agreement through a fully executed Exhibit C Project Assignment and Purchase Order.
- 1.13 Project Construction Budget. An estimate of the construction contract award cost or Guaranteed Maximum Price (GMP) of the Project.
- 1.14 Reimbursable Expenses. Reimbursable Expenses are those actual expenditures made by the Professional Consultant, its employees, or its subconsultants in connection with the Project, which are over and above those provided for in Basic Services and are authorized by the Owner in writing in advance.
- 1.15 Services. The Services to be performed by the Professional Consultant under this Agreement shall consist of the Basic Services described in Article 3 and any Additional Services under Article 7.
- 1.16 Work. The Work shall consist of the total design and related services performed by the Professional Consultant for the Project.

ARTICLE 2

RELATIONSHIP OF THE PARTIES

- 2.1 Professional Consultant Services. The Professional Consultant shall provide professional services for the Project in accordance with the terms and conditions of this Agreement. The Professional Consultant's performance of services shall be as professional consultant to the Owner to carry out the activities of Project design and construction administration and to provide the technical documents and engineering services to achieve the Owner's Project objectives.

The Professional Consultant certifies to the Owner that it is licensed, registered or certified in all required professional disciplines to meet the requirements of Florida Statutes, Florida Department of Education regulations, and to meet the requirements of the specific Project. If the Professional Consultant should at any time lose such license, registration or certification in any required discipline, it shall immediately notify the Owner.

If the Owner determines that the Professional Consultant cannot perform the professional services required under this Agreement, it shall declare this Agreement void and be obligated to only pay for those services rendered before loss of license, registration or certification after deducting the compensation and related expenses to hire another Professional Consultant to perform the Work required for the Project.

- 2.2 Owner Representation. The Owner shall designate, when necessary, representatives authorized to act in the Owner's behalf with respect to the Project. The Owner or such authorized representative shall examine the documents submitted by the Professional Consultant and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Professional Consultant services.

Instructions by the Owner to the Professional Consultant relating to services performed by the Professional Consultant shall be issued or made by or through in accordance with procedural, organizational, and documentation standards established by the Owner. Communications and submittals of the Professional Consultant to the Owner and Contractor shall be issued or made in accord with similar procedural and documentation standards established by the Owner. The Owner shall have the authority to establish procedures, consistent with this Agreement, to be followed by the Professional Consultant and to call periodic conferences to be attended by the Professional Consultant, and his subconsultants, throughout the term of this Agreement.

- 2.3 Other Consultants. The Owner may provide drawings, data, recommendations, suggestions, consultation and/or other information relating to the Project from other Consultants under separate contract with the Owner. The Professional Consultant shall coordinate and cooperate with the Owner's other consultants.

- 2.4 Professional Consultant Representation. The Professional Consultant shall provide to the Owner a list of the proposed key project personnel of the Professional Consultant to be assigned to the Project. This list shall include such information on the professional background of each of the assigned personnel to demonstrate their professional capabilities. Such key personnel shall be satisfactory to the Owner and shall not be changed except with the consent of the Owner unless said personnel cease to be in the Professional Consultant's employ.

- 2.5 Division of Responsibilities/Services. The Professional Consultant understands and agrees that should the Owner or other Consultant provide the Professional Consultant with any estimating assistance, cost or time control recommendations or other consultation, recommendations or suggestions, any or all such activities on the part of the Owner, consultant, or any other representative of the Owner shall in no way relieve the Professional Consultant of the responsibility of fulfilling its obligations and responsibilities under this Agreement.
- 2.6 Prohibition against Contingent Fees. The Professional Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Professional Consultant, to solicit or secure this agreement and that he has not paid or agreed to pay any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this agreement, to any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Professional Consultant.
- 2.7 Truth-In-Negotiation. The Professional Consultant certifies that wage rates and other factual unit costs supporting the compensation herein stated are accurate, complete, and current as of the date of this Agreement. The original Project Fee, Hourly Fees and Reimbursable Expenses and any additions thereto shall be adjusted to exclude any significant sums by which the School Board determines these Fees or Expenses were increased due to inaccurate, incomplete or non-current wage rates or other factual unit costs. All such adjustments shall be made within one year following the end of the Agreement.

ARTICLE 3

PROFESSIONAL CONSULTANTS' RESPONSIBILITIES

- 3.1 Scope of Services.
- 3.1.1 The Basic Services to be provided by the Professional Consultant shall be performed in the phases described hereinafter and shall include all services customarily furnished in accordance with generally accepted industry practices for this type of professional service consistent with the terms of this Agreement, and specifically identified and described in Exhibit A attached hereto and made a part of this Agreement. Without limiting the generality of the services set forth in Exhibit A, the Basic Services shall include any design services which are normally or customarily furnished and reasonably necessary for the performance of the tasks and duties and obligations set forth in Exhibit A.
- 3.1.2 The Professional Consultant shall provide all necessary documents and other services required for the Work. All Work shall be performed in accordance with current: Florida Statutes, Rules of the Florida Department of Education, Florida State Requirements for Educational Facilities (SREF), Florida Building Code, Florida Fire Prevention Code, Florida Administrative Code Rule 6A-2.0010, Owner's Design Standards and Brevard County School Board Policies.

3.2 Professional Consultant's Professional Responsibility and Standard of Care.

- 3.2.1 By execution of this Agreement, the Professional Consultant hereby warrants that (a) it is an experienced, established firm having the ability and skill necessary to perform all the services required of it under this Agreement in connection with scope and complexity of the Project contemplated herein; (b) it has the capabilities and resources necessary to perform its obligations hereunder; and (c) it is familiar with current laws, rules and regulations which are applicable (such laws, rules and regulations including, but not limited to, local ordinances, requirements of building codes of city, county, state and federal authorities which are applicable to the Project, local sanitary laws and rules and regulations, and orders and interpretations by governing public authorities of such ordinances, requirements, codes, laws, rules and regulations in effect at the time of commencement of services applicable to the Project), and that all drawings, specifications and other documents prepared by the Professional Consultant shall be prepared in accordance with and shall accurately meet, reflect and incorporate all such laws, rules and regulations.
- 3.2.2 The Professional Consultant hereby represents and agrees within the professional standard of care that the drawings, specifications, documents and other services prepared by it pursuant to this Agreement shall be complete and functional for the purposes intended, as mutually agreed upon between the Owner and the Professional Consultant, except as to any deficiencies which are due to causes beyond the control of the Professional Consultant, and that the Project, if constructed in accordance with the intent established by such drawings, specifications and other documents, shall be structurally sound and suitable for the purpose intended.
- 3.2.3 The Professional Consultant shall be responsible for any negligent acts, errors, or omissions in the drawings, specifications, documents and other services within the normal standard of care at the time services are rendered. While the Professional Consultant cannot guarantee the various documents and services required herein to be completely free of minor human errors and omissions, it shall be the responsibility of the Professional Consultant throughout the period of performance under this Agreement to use due care with professional competence. The Professional Consultant will correct at no additional cost to the Owner any negligent acts, errors and omissions in the drawings, specifications, documents and other services prepared by the Professional Consultant. The Professional Consultant further agrees, at no additional cost, to render assistance to the Owner in resolving problems identified by the Owner relating to the design, specified materials or related Project issues.
- 3.2.4 It is the responsibility of the Professional Consultant to make certain that all drawings, specifications and other documents are in accordance with applicable laws, statutes, building codes and regulations and that appropriate reviews and approvals are requested and obtained from Federal, State and local governments.

- 3.2.5 It is the responsibility of the Professional Consultant to assure that the Project Construction Documents require that no asbestos containing materials are to be incorporated in the Project, and that the Contractor must certify that no asbestos containing material was used as a pre- condition to final payment.
- 3.2.6 If construction pricing exceeds the Project Construction Budget, the Professional Consultant shall, at no additional cost to the Owner, revise the design documents to meet the Project Construction Budget in cooperation with the Owner and Contractor (if applicable). The Professional Consultant's responsibilities may include but shall not be limited to, participating in discussions, meetings and decisions, revising documents or providing additional documents as necessary to obtain pricing to meet budget constraints.

3.3 Project Requirements.

- 3.3.1 During all phases of the Project, the Professional Consultant shall prepare such estimates as the Owner deems necessary, at no additional cost to the Owner, to represent the estimated Project cost and shall supply such data, information or estimates as the Owner may require to substantiate the Professional Consultant's estimate of the Project cost.
- 3.3.2 The Professional Consultant shall not be responsible for the Contractor's means, methods, sequences or techniques of construction; the Contractor's safety procedures, or the Contractor's failure to comply with the Construction Contract Documents, plans, specifications, and applicable codes. However, the Professional Consultant shall notify the Owner immediately upon observing any construction activity that does not meet safety standards or is not in compliance with the Contract Documents.

3.4 Project Conferences.

- 3.4.1 Throughout all phases of the Project, the Professional Consultant and its subconsultants shall meet periodically with the Owner when reasonably requested. Participants shall be as determined by the Owner and may include, but not be limited to:
 - 3.4.1.1 Predesign and design conferences as necessary or as required by the Owner, to include stakeholder coordination and/or engagement meetings.
 - 3.4.1.2 Prebid and preconstruction conference for each construction contract.
 - 3.4.1.3 Construction progress meetings as may be required by the Owner.
 - 3.4.1.4 Substantial Completion, Final Completion and completion of warranty period inspections for each construction contract.

- 3.4.2 The Professional Consultant shall be responsible for scheduling, taking meeting minutes, and attending any meetings necessary to properly coordinate the design effort including, without limitation, meetings with governing agencies, code officials, maintenance staff and applicable utilities.

ARTICLE 4

COMPENSATION

4.1 Basic Services Compensation.

The Owner shall compensate the Professional Consultant in accordance with the terms and conditions of this Agreement, including the following:

- 4.1.1 For the Basic Services of the Professional Consultant, compensation shall be a Not to Exceed amount determined based on the required effort- hours and the Hourly Rate Schedule included as Exhibit B, such amount to be set forth in writing and made a part of this Agreement as set forth in Exhibit C Project Assignment. It is the intent of this Agreement that each Project Assignment for which services are to be performed shall be priced individually.

- 4.1.1.1 For each Project Assignment the Professional Consultant shall submit a proposal which shall include:

1. A complete scope of Work to be performed.
2. A complete description of each phase of Work.
3. A time schedule for the Work.
4. All costs to be incurred by the Owner for the professional services to be performed.
5. An estimate of the Project Construction Budget, where appropriate.
6. Proposed Staff.
7. Proposed Sub-Consultants.
8. No terms shall be stated in the proposal which are contrary to, or stated as superseding, the terms of this agreement unless expressly approved by the Owner in writing.

- 4.1.1.2 Should the Owner request additions to the Project which would cause a change or changes in the scope of the Work or previously approved designs or design criteria, the Project Construction Budget shall be increased by the aggregate amount of such change(s) and the Professional Consultant's fee shall be increased as an Additional Service in relation to the effort required for the change(s).

- 4.1.1.3 In the event the Owner requests changes to the Project which would decrease the Project Construction Budget, basic compensation due the Professional Consultant shall be adjusted downwards for remaining services to be performed

but not for services already performed to the date of receipt by the Professional Consultant of the written requested change.

- 4.1.2 The Basic Services Compensation stated in Article 4.1.1 includes all compensation and other payments due the Professional Consultant (manpower, overhead, profit, direct costs, etc.) in the performance of the Basic Services.
 - 4.1.3 The Professional Consultant certifies that his wage rates, unit costs and other factual data which may have been furnished the Owner to support the compensation schedule are accurate, complete and current at the time of entering into this Agreement. It is mutually understood between the Professional Consultant and the Owner that the original fee schedule and any additions thereto shall be adjusted within one year, if required, to exclude any significant sums wherein the Owner determines the fee was increased due to inaccurate, incomplete or noncurrent wage rates, unit costs and/or other factual data which may have been furnished by the Professional Consultant.
 - 4.1.4 Compensation shall be based on the number of hours spent by each employee directly attributable to services required for each specific project, and shall not include travel time to and from the project sites. Hourly rates for Direct Personnel Expense shall be in compliance with Exhibit B.
- 4.2 Payments to the Professional Consultant. Payments to the Professional Consultant shall be made as follows:
- 4.2.1 Payments for Basic Services shall be made monthly in proportion to services performed based upon presentation of the Professional Consultant's statement of services, fully supported by invoices, time cards, and certifications if requested that all subconsultants have been paid, and other documentation as may be requested by the Owner.
 - 4.2.2 Deductions may be made from the Professional Consultant's Basic Services Compensation on account of errors and omissions in the drawings, specifications, documents and other services prepared by the Professional Consultant in accordance with the provisions of Article 3.2.3.
 - 4.2.3 Payments due for Reimbursable Expenses incurred while performing Basic or Additional Services shall be computed at 1.0 times actual costs. **Before incurring any Reimbursable Expenses, the Professional Consultant must request and receive written authorization from the Owner. Travel expenses are not reimbursable.**
 - 4.2.4 Final payment to the Professional Consultant shall not be made by the Owner until the following items have been received by the Owner:
 - 1. Electronic copies of all drawings, specifications, documents and other services prepared by the Professional Consultant in connection with the Project, in conformance with Article 13.1, including incorporation of the Contractor's "As-Built" records of the Project, if required in Exhibit A.

2. All certifications required by Exhibit A and applicable laws, statutes, building codes, regulations and this Agreement, including as may be applicable Federal, State and local government regulations or requirements.

4.3 Additional Services Compensation.

- 4.3.1 Prior to any Additional Services, as described in Article 7 herein, performed by the Professional Consultant hereunder, the Professional Consultant and Owner shall negotiate the Additional Services Compensation.
- 4.3.2 Payments for Additional Services to the Professional Consultant shall be made monthly upon presentation of the Professional Consultant's statement of services, fully supported by invoices, time sheets/cards, and other documentation as requested by the Owner. Professional Consultant expressly waives any right to payment for any Additional Services rendered if Professional Consultant does not give written notice of its claim that the services are additional within twenty (20) days of rendering the services, and if such services are not billed as Additional Services within sixty (60) days following their rendition.

4.4 Accounting Records.

- 4.4.1 Records of the Professional Consultant with respect to Basic Services and Additional Services and payroll, subconsultant and other expenses (including Reimbursable Expenses) pertaining to the Project, shall be kept on generally accepted accounting principles and shall be available to the Owner or its authorized representative for inspection and copying at mutually convenient times.
- 4.4.2 At the request of the Owner or its authorized representative the Professional Consultant will supply in a timely manner and certify as accurate, unaltered copies of all time sheets, invoices, and other documents to substantiate and document any and all Basic Services, Additional Services and Reimbursable Expenses.

4.5 Lien Waivers. Professional Consultant shall not be entitled to receive payment hereunder until Owner is provided such lien waivers, including lien waivers from Professional Consultant's subconsultants, detailed descriptions of services, and sworn statements of certification stating Professional Consultant's services are in compliance with the requirements of this Agreement, as Owner may reasonably require in connection with Professional Consultant's request for payment.

4.6 Timely Invoicing. Professional Consultant must submit invoices for services no later than sixty (60) days following services rendered or within sixty (60) days following completion of Project milestones. Professional Consultant expressly waives its right to payment if invoices are not submitted within sixty (60) days following services rendered.

**ARTICLE 5
CONTRACT TERM**

- 5.1 The contract term will be through December 2025 or as may be extended by mutual consent of the parties to complete the Project.

**ARTICLE 6
OWNER'S RESPONSIBILITIES**

- 6.1 The Owner shall, with the assistance of the Professional Consultant, provide full information regarding the requirements for the Project.
- 6.2 The Owner shall examine documents submitted by the Professional Consultant and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Professional Consultant's Services.
- 6.3 The Owner shall pay for laboratory tests, inspections and reports as required by the project scope that are not otherwise called for in this Agreement. The Professional Consultant shall review and confirm the sufficiency of any test and information furnished to Professional Consultant by or on behalf of Owner pursuant to Article 6.5.
- 6.4 All services, information, surveys and reports required of the Owner, shall be furnished at the Owner's expense and the Professional Consultant shall be entitled to rely upon their accuracy and completeness.
- 6.5 The Owner shall furnish information and approvals required of it expeditiously, for orderly progress of the Work.
- 6.6 The Owner shall pay for and the Professional Consultant shall assist the Owner in obtaining all necessary permits, licenses, approvals, assessments, and charges required for the construction, use or occupancy of permanent structures and site improvements or for permanent changes to existing facilities.
- 6.7 The Owner shall designate a representative to act on the Owner's behalf with respect to each Project Assignment. The Owner's Representative shall have the authority to approve minor changes in the scope of the Project Assignment and shall be available during working hours as often as may be necessary to examine information, to render decisions and to furnish information in a timely manner. Revisions to the Project Assignment which necessitate additional compensation require a new Exhibit C Project Assignment and a corresponding purchase order (reference Article 7.3 Additional Services). Any decisions rendered by the Owner's representative may be subject to review and approval by the School Board.
- 6.8 The Owner shall provide for all investigation testing, analysis and abatement of any asbestos containing material that may exist in School Board facilities.

ARTICLE 7

ADDITIONAL SERVICES

- 7.1 Attached hereto and made a part of this Agreement as Exhibit B are the Hourly Rates that will be used for determining the fees to be paid for Additional Services. Such services shall be authorized in advance by the Owner.
- 7.2 The Owner will compensate the Professional Consultant for authorized Additional Services performed as herein provided to the extent that they exceed the obligations of the Professional Consultant for Basic Services under this Agreement.
- 7.3 Additional services will be authorized only through an Exhibit C Project Assignment and Purchase Order.

ARTICLE 8

NOTICES

- 8.1 Any notice required by this Agreement or other communications to either party by the other shall be in writing and deemed given when delivered personally or when deposited in the United States Post Office, first class, postage prepaid, addressed as follows, or to such other address as shall be duly given by notice meeting the requirement of this Article.

To Owner:

The School Board of Brevard County, Florida
Facilities Department
2700 Judge Fran Jamieson Way Viera, Florida 32940-6601
Attention: David Lindemann, AICP, Director; Planning & Project Management

To Professional Consultant:

Gale Associates, Inc.
160 North Westmonte Drive, Suite 120
Altamonte Springs, FL 32714
Attention: Tony B. Robinson, RRC, BECxP, LEED AP

ARTICLE 9

INSURANCE

- 9.1 The Professional Consultant shall purchase and maintain workers' compensation insurance for all of their employees during the entire period of this contract. The Professional Consultant shall also purchase and maintain for the entire period of this contract, insurance that protects itself and the Owner from any and all claims resulting from negligent or wrongful acts or omissions, damages due to bodily injury, including personal injury, sickness, disease or death of any of the Professional Consultant's employees or any other person; claims for damages because of injury to or destruction of personal property including loss of use resulting therefrom; and claims arising out of the performance of this Agreement and caused by negligent acts or omissions for which the Professional Consultant is legally liable. All insurance provided under this Agreement shall be through an insurance carrier acceptable to the Owner. The insurance carrier shall be rated "A-" or better by Best's Key Rating Guide and shall provide the Owner with evidence of financial strength. The minimum limits of insurance coverage shall be as follows:

Insurance Description	Minimum Required Coverage
a. General Liability Insurance:	
Negligence including Bodily Injury: Per Claim	\$ 1,000,000.00
Negligence including Bodily Injury: Per Occurrence	\$ 2,000,000.00
Property Damage: Each Accident	\$ 1,000,000.00
b. Automobile Liability:	
Negligence including Bodily Injury: Per Claim	\$ 500,000.00
Negligence including Bodily Injury: Per Occurrence	\$ 1,000,000.00
Property Damage: Each Occurrence	\$ 500,000.00
c. Workers' Compensation/Employer's Liability:	
W.C. Limit Required	Statutory Limits
E.L. Each Accident	\$ 1,000,000.00
E.L. Disease – Each Employee	\$ 500,000.00
E.L. Disease – Policy Limit	\$ 1,000,000.00
Workers' Compensation Exemption forms will not be accepted. All entities or individuals are required to purchase a Workers' Compensation insurance policy.	
d. Professional Liability Insurance (E&O,D&O,etc.):	
Each Claim	\$ 500,000.00
Per Occurrence	\$ 1,000,000.00

- 9.2 The General and Auto liability insurance policies required under Section 9.1 of this Agreement shall name the Owner as an additional insured and shall contain a waiver of subrogation against the Owner. The Owner shall also be listed as an additional insured on the Professional Consultant's Professional Liability insurance policy should the policy be on a form other than a "claims made" policy.
- 9.2.1 The Professional Consultant shall deliver to the Owner a certificate of insurance for its Workers' Compensation, General Liability, Auto Liability and Professional Liability prior to the commencement of work and annually thereafter, so long as it is required to maintain such coverage under Article 9.4.
- 9.3 Evidence of such insurance shall be furnished to the Owner as part of this Agreement, and the Owner shall receive thirty (30) days prior written notice of any cancellation, non-renewal or reduction of coverage of any of the policies. Upon notice of such cancellation, non-renewal or reduction, the Professional Consultant shall procure substitute insurance so as to assure the Owner that the minimum limits of coverage are maintained continuously throughout the period of this Agreement.
- 9.4 The Professional Consultant shall maintain Professional Liability insurance in force during the performance of this Agreement and for three years after the conclusion of this agreement.
- 9.5 The Professional Consultant shall require the provisions of this Article 9 to apply in full force and effect to its subconsultants and shall provide to the Owner certificates of insurance as described in Article 9.2 for all subconsultants.
- 9.6 The Owner may elect to purchase insurance under an Owner Controlled Insurance Program, in which case the Professional Consultant will not be required to provide insurance, but will provide coordination with the Owner and the Owner's insurance administrator, as required.

ARTICLE 10

INDEMNIFICATION

- 10.1 Notwithstanding anything to the contrary contained herein, the Professional Consultant shall indemnify and hold harmless the Owner and its officers, agents and employees from and against any and all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from (1) the Professional Consultant's performance or failure to perform its obligations under this Agreement and (2) any claim, damage, loss or expense attributable to bodily injury, sickness, disease, intentional acts or death, or to injury to or destruction of personal property including the loss of use resulting therefrom and caused by any negligent act or omission of the Professional Consultant, anyone directly or indirectly employed by the Professional Consultant or anyone for whose acts the Professional Consultant may be liable to the extent and in proportion to the Professional Consultant's comparative degree of fault. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

- 10.2 Except as otherwise set forth in this Agreement, the Professional Consultant and the Owner shall not be liable to each other for any delays in the performance of their respective obligations and responsibilities under this Agreement which arise from causes beyond their control and without their fault or negligence, including but not limited to, any of the following events or occurrences: fire, flood, earthquake, epidemic, atmospheric condition of unusual severity, war, and strikes. Owner shall not be liable to the Professional Consultant for acts or failures to act by Owner, the Contractor or the Owner's Consultants. The Professional Consultant shall not be liable for acts or failures to act by the Contractor, the Owner, or Owner's Consultants.

ARTICLE 11

TERMINATION OF AGREEMENT

- 11.1 Upon the appointment of a receiver for the Professional Consultant, or if the Professional Consultant makes a general assignment for the benefit of creditors, the Owner may terminate this Agreement, without prejudice to any right or remedy otherwise available to the Owner, upon giving three (3) days written notice to the Professional Consultant. If an order for relief is entered under the bankruptcy code with respect to the Professional Consultant, the Owner may terminate this Agreement by giving three (3) working days written notice to the Professional Consultant unless the Professional Consultant or the trustee: (1), promptly cures all breaches; (2), provides adequate assurances of future performance; (3), compensates the Owner for actual pecuniary loss resulting from such breaches; and (4), assumes the obligations of the Professional Consultant within the statutory time limits.
- 11.2 If the Professional Consultant persistently or repeatedly refuses or fails to supply sufficient properly skilled staff or proper materials, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority jurisdiction, or does not meet agreed upon schedules or otherwise substantially violates or breaches any term or provision of this Agreement, then the Owner may, without prejudice to any right or remedy otherwise available to the Owner, and after giving the Professional Consultant seven (7) days prior written notice, terminate this Agreement.
- 11.3 Upon termination of this Agreement by the Owner under Articles 11.1 and 11.2, the Owner shall be entitled to furnish or have furnished the services to be performed hereunder by whatever method the Owner may deem expedient.
- 11.4 Upon termination of this Agreement by the Owner under Articles 11.1 and 11.2, the Professional Consultant is not entitled to payment for incomplete or unusable services that may have been rendered. The Professional Consultant may be entitled to payment for work performed through the date of termination if the work is complete and meets the standard of care as required in Article 3.2. The Professional Consultant must provide the documentation to substantiate the final invoice amount prior to payment.
- 11.4 The Owner or Professional Consultant may, upon thirty (30) days written notice, terminate this Agreement, in whole or in part, at any time for the convenience of both parties, without prejudice to any right or remedy otherwise available to the Owner.

- 11.5 Upon receipt of Notice of Termination, the Professional Consultant shall immediately discontinue all services affected unless such notice directs otherwise. In the event of a termination for convenience of the Owner, the Professional Consultant's sole and exclusive right and remedy is to be paid for all work performed and to receive equitable adjustment for all work performed through the date of termination. The Professional Consultant shall not be entitled to be paid any amount as profit for unperformed services or consideration for the termination of convenience by the Owner.
- 11.5 Should the Owner terminate this agreement as provided for under this Article, the Owner will acquire such drawings, including the ownership and use of all drawings, specifications, documents and materials relating to the Project prepared by or in the possession of the Professional Consultant, prior to final payment to the Consultant. The Professional Consultant will turn over to the Owner in a timely manner and in good unaltered condition all original drawings, specifications, documents and materials. In the event of any termination pursuant to Articles 11.1 or 11.2 of this Agreement, the Professional Consultant consents to the Owner selection of another consultant of Owner's choice to assist the Owner in any way in completing the Project. Professional Consultant further agrees to cooperate and provide any information requested by the Owner in connection with the completion of the Project and consents to and authorizes the making of any reasonable changes to the design of the Project by Owner and such other consultant as Owner may desire. Any services provided by the Professional Consultant which are requested by the Owner after termination shall be fairly compensated by Owner.
- 11.6 The payment of any sums by the Owner under this Article 11 shall not constitute a waiver of any claims for damages by the Owner for any breach of the Agreement by the Professional Consultant.

ARTICLE 12

SUCCESSORS/ASSIGNMENT

- 12.1 This Agreement shall inure to the benefit of and be binding on the heirs, successors, assigns, trustees and personal representatives of the Owner, as well as the permitted assigns and trustees of the Professional Consultant.
- 12.2 The Professional Consultant shall not assign, sublet or transfer its interest in this Agreement without the written consent of the Owner, except that the Professional Consultant may assign accounts receivable to a commercial bank or financial institution for securing loans, without prior approval of the Owner.

ARTICLE 13

OWNERSHIP OF DOCUMENTS/INFORMATION

- 13.1 Drawings and Specifications and other documents as instruments of service are and shall remain the joint property of the Professional Consultant and the Owner whether the Project for which they are made is built or not. The Professional Consultant shall provide, and the Owner shall retain, electronic copies of drawings in AutoCAD or .pdf format, specifications in MS Word format and other documents in AutoCAD, MS

Word, MS Excel, MS Access or MS Project as appropriate for information, reference and use in connection with the Owner's use and occupancy of the Project and for the Owner's future requirements of the Project's facilities including without limitation any alteration or expansion in any manner the Owner deems appropriate without additional compensation or fee to the Professional Consultant. The Owner shall assume responsibility in connection with its use of the drawings and specifications without the Professional Consultant's consent.

ARTICLE 14

ADDITIONAL PROVISIONS

- 14.1 The Owner and Professional Consultant agree to endeavor to provide written notification in advance of any litigation, concerning claims, disputes, and other matters in question between the parties to this Agreement arising out of or relating to this agreement or the breach thereof.
- 14.2 The parties agree to endeavor to negotiate in good faith, prior to litigation, concerning claims, disputes and other matters in questions arising out of or relating to this Agreement or the breach thereof.
- 14.3 Nothing herein contained shall be construed to require the parties to provide written notifications or engage in negotiations prior to the institution of litigation nor to submit for arbitration by a third party or parties any such claim, dispute or other matter in question between the parties but the parties may by mutual agreement submit any claim dispute or other matter at issue to arbitration in accordance with Florida State Law or such other arbitration procedure as may be mutually agreed upon between the parties.
- 14.4 Whenever renderings, photographs of renderings, photographs of models, photographs, drawings, announcements, or other illustration or information of the Project are released for public information, advertisement or publicity, appropriate and proper credit for design services, to the fullest extent possible, will be given to the Professional Consultant, and ownership of the project to the Owner.
- 14.5 This Agreement and its Exhibits and Attachments represent the entire and integrated agreement between the Owner and the Professional Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Professional Consultant.
- 14.6 Unless otherwise specified, this Agreement shall be governed by the law of the State of Florida, USA. It is expressly agreed by both parties that any litigation must be filed in courts of law in Brevard County, Florida.
- 14.7 If any one or more of the provisions contained in this Agreement, for any reason, are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

- 14.8 Except where specifically stated otherwise, all periods of time stated in terms of days shall be considered periods calculated in calendar days.
- 14.9 The headings or captions within this Agreement shall be deemed set forth in the manner presented for the purposes of reference only and shall not control or otherwise affect the information set forth therein or interpretation thereof.
- 14.10 For the purpose of this Agreement unless the context clearly indicates otherwise, the singular includes the plural, and the plural includes the singular.
- 14.11 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, which shall be sufficient evidence by any one thereof.
- 14.12 **Jessica Lunsford Act.** Professional Consultant shall, at its expense, ensure that all of Professional Consultant's employees and the employees of Professional Consultant's subcontractors who will be permitted access on school grounds meet the background screening requirements of Section 1012.465, Fl. Stat., (Jessica Lunsford Act). Professional Consultant's failure to comply with this requirement will constitute a material breach of the contract.
- 14.13 **Document Control.** Professional Consultant shall utilize the School Board's Master Library™ cloud-based construction management software system for Project document control. Access to the system will be provided at no charge; however, the Professional Consultant will be required to manage access for their team and subconsultants. One training session will be provided to the Professional Consultant and their team upon request.
- 14.14 **Sales Surtax Projects.** Any projects wholly or partially funded with Sales Surtax shall include an itemized estimated construction cost estimate by sales surtax group and category and by any alternative funding sources that may be applied to the project. Funding resources may not be mixed groups (Security, Educational Technology and Facility Renewal) and between sales surtax and non-sales surtax resources.
- 14.15 **E-Verify.** Under Executive Order 11-116, and Section 448.095, Fla. Stat., effective July 1, 2020, Contractor shall use the U.S. Agency of Homeland Security's E-Verify system, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement. Contractor shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement. Contractor must provide evidence of compliance with 448.095, Fla. Stat by January 1, 2021. Evidence may consist of, but is not limited to, providing notice of Contractor's E-Verify number. Failure to comply with this provision is a material breach of the Agreement, and BPS may choose to terminate the Agreement at its sole discretion. Contractor may be liable for all costs associated with BPS securing the same services, inclusive, but not limited to, higher costs for the same services and rebidding costs (if necessary).

This Agreement executed the day and year first written above.

**THE SCHOOL BOARD OF
BREVARD COUNTY, FLORIDA:**

By: _____

Print Name: Misty Belford, Chairperson

Date Approved: _____

GALE ASSOCIATES, INC.

By:  _____

Print Name: Tony B. Robinson, RRC, BECxP, LEED AP

Title: Associate

Date: March 25, 2021

ATTEST (WITNESS):

By:  _____

Print Name: Sheryl Rivas

Title: Administrative Assistant

Professional Consultant Contact Name: Tony B. Robinson, RRC, BECxP, LEED AP

Email Address: tbr@gainc.com

Phone Number: 407.599.7031