

3H-10

Agenda Item #:

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: September 12, 2017

☒ **Consent**

☐ **Regular**

☐ **Workshop**

☐ **Public Hearing**

Department: Facilities Development and Operations

I. EXECUTIVE BRIEF

Motion and Title: **Staff recommends motion to approve:** Contract with Kurisu, LLC in the amount of \$673,776 to provide consulting, design, and maintenance at the Morikami Museum and Japanese Gardens (Gardens).

Summary: This contract is to provide continuous services necessary to properly design and manage the Morikami Japanese Gardens and to provide authentic Japanese style trimming, pruning, and training of shrubs and trees at the Gardens. This contract is for a three (3) year period with two (2) one (1) year renewal options. The Small Business Enterprise (SBE) participation goal established by the SBE Ordinance is 15%. Kurisu, LLC SBE participation for the contract is 100%. This contract is fully funded approximately 55% by the County ad valorem and 45% by Morikami, Inc., the County not for profit partner. Kurisu, LLC is a national business with a Palm Beach County Office and is using a landscape architect subconsultant from Palm Beach County. **(Capital Improvements Division) District 5 (LDC)**

Background and Justification: In the mid 1970's, Mr. George Sukeji Morikami donated 200 acres of land to Palm Beach County and the State of Florida. The landscape architectural firm of Roy-Fisher & Associates and the Japanese landscape design firm of Kurisu International coordinated a development plan for the Gardens. Morikami Museum and Japanese Gardens were constructed in early 1999 with completion and formal opening in 2001. Over the last 15 years, the Gardens have been pruned and trained to bring Kurisu's vision to fruition. The Gardens are a living exhibit of the Morikami Museum and Japanese Gardens and have been recognized nationally and internationally by numerous organizations.

The purpose of having a consultant under contract for continuing services is to ensure the Morikami Museum and Japanese Gardens is maintained at the highest standard consistent with the original design and vision set forth by the designer, Kurisu International and to secure a high level garden maintenance contractor that is skilled in traditional and authentic Japanese gardening techniques and is well versed in the meaning and spirit of a Japanese garden. Selection was performed under Board adopted procedures pursuant to the Consultant Competitive Negotiations Act (CCNA) and Florida Statute 287.055.

Attachments:

1. Location Map
2. Budget Availability Statement
3. Contract
4. Disclosure of Ownership Interests

Recommended by:



Department Director

8/13/17

Date

Approved by:



County Administrator

8/30/17

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures	<u> </u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Operating Costs	<u> </u>	<u>\$220,000</u>	<u>\$224,888</u>	<u>\$228,888</u>	<u>0</u>
External Revenues	<u> </u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u> </u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match (County)	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
NET FISCAL IMPACT	<u> </u>	<u>\$220,000</u>	<u>\$224,888</u>	<u>\$228,888</u>	<u> </u>
# ADDITIONAL FTE	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
POSITIONS (Cumulative)	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

Is Item Included in ^{the Proposed} Budget? Yes X No

Budget Account No: Fund 0001 Dept 580 Unit 5235 Object 3401


B. Recommended Sources of Funds/Summary of Fiscal Impact:

This contract is fully funded approximately 55% by the County ad valorem and 45% by Morikami, Inc., the County not for profit partner.


C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS:

A. OFMB Fiscal and/or Contract Development and Control Comments:



 OFMB E8821 8/22



 Contract Administrator

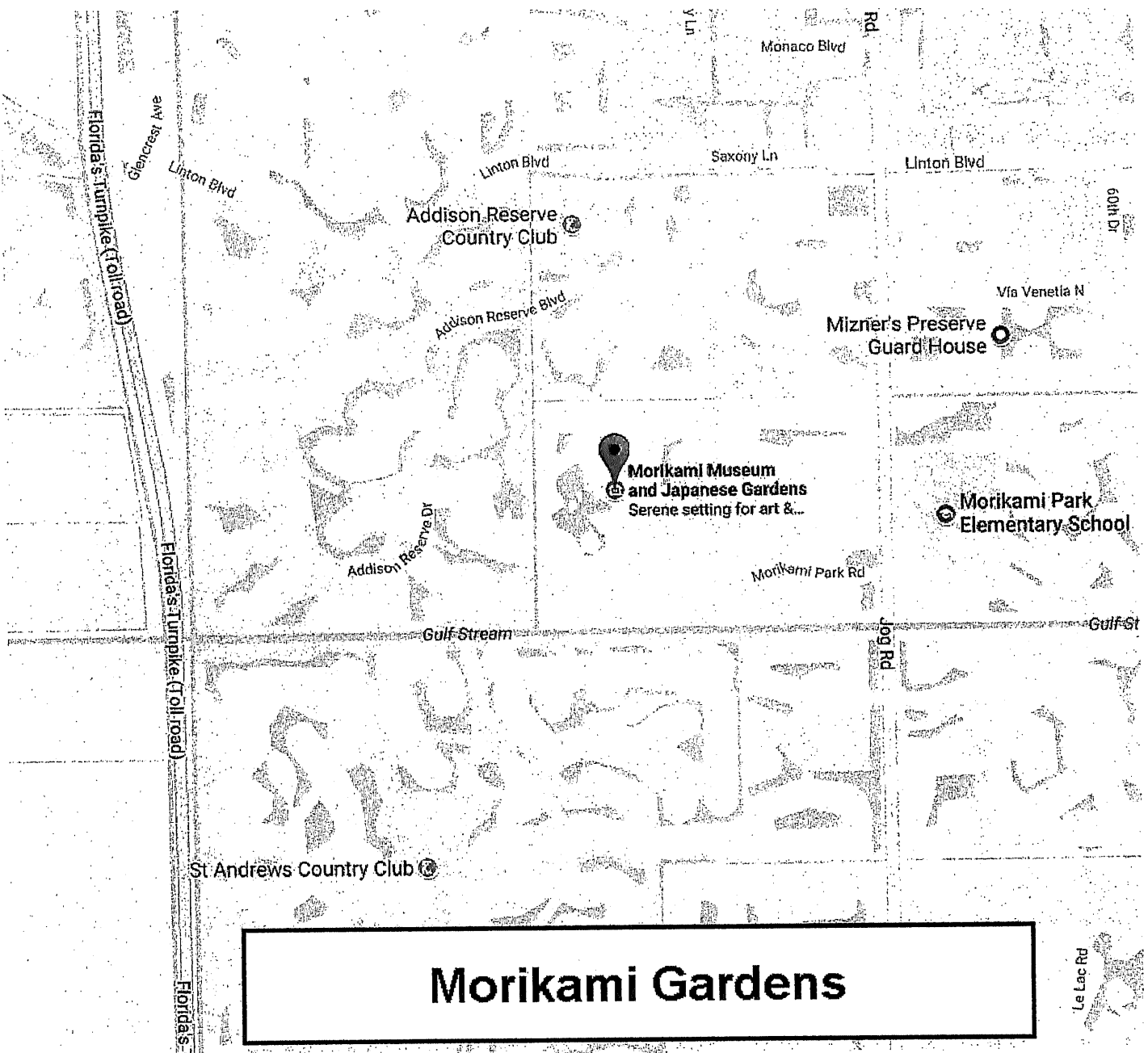
B. Legal Sufficiency:


Assistant County Attorney

C. Other Department Review:


Department Director

This summary is not to be used as a basis for payment.



Morikami Gardens

BUDGET AVAILABILITY STATEMENT

REQUEST DATE: 07/10/17

REQUESTED BY: John Chesher

PHONE: 233-0266

PROJECT TITLE: Morikami Gardens Maintenance
(Same as CIP or IST, if applicable)

IST PLANNING NO.:

ORIGINAL CONTRACT AMOUNT: N/A

BCC RESOLUTION#:

REQUESTED AMOUNT: \$673,776

DATE:

CSA or CHANGE ORDER NUMBER:

LOCATION:

BUILDING NUMBER:

DESCRIPTION OF WORK/SERVICE LOCATION:

PROJECT/W.O. NUMBER: 17211

CONSULTANT/CONTRACTOR: Kurisu, LLC

PROVIDE A BRIEF STATEMENT OF THE SCOPE OF SERVICES TO BE PROVIDED BY THE CONSULTANT/CONTRACTOR:

Contract to provide consulting, design, and maintenance at the gardens.

CONSTRUCTION	\$
PROFESSIONAL SERVICES	\$673,776
STAFF COSTS*	\$
EQUIP. / SUPPLIES	\$
CONTINGENCY	\$
TOTAL	\$673,776

* By signing this BAS your department agrees to these CID staff charges and your account will be charged upon receipt of this BAS by FD&O. Unless there is a change in the scope of work, no additional staff charges will be billed. If this BAS is for construction costs of \$250,000 or greater, staff charges will be billed as actual and reconciled at the end of the project. If the project requires Facilities Management or ESS staff your department will be billed actual hours worked upon project completion.

BUDGET ACCOUNT NUMBER(S) (Specify distribution if more than one and order in which funds are to be used):

FUND: 0001 DEPT: 580 UNIT: 5235 OBJ: 3401

IDENTIFY FUNDING SOURCE FOR EACH ACCOUNT: (check and provide detail for all that apply)

Ad Valorem (Amount \$ _____)	Infrastructure Sales Tax (Amount \$ _____)
State (source/type: _____ Amount \$ _____)	Federal (source/type: _____ Amount \$ _____)
Grant (source/type: _____ Amount \$ _____)	Impact Fees: (Amount \$ _____)
Other (source/type: _____ Amount \$ _____)	

Department: PDC

BAS APPROVED BY: [Signature]

DATE 7-14-17

ENCUMBRANCE NUMBER: _____

**CONTRACT FOR PROFESSIONAL
SERVICES**

**LANDSCAPE DESIGN AND
MAINTENANCE**

**MORIKAMI MUSEUM AND
JAPANESE GARDENS**

PROJECT #17211

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CONTRACT FOR PROFESSIONAL SERVICES
Landscape Design and Maintenance
Project Name: Morikami Museum and Japanese Gardens
Project Number: 17211 (hereinafter the "Project")

This Contract (hereinafter the "Contract") is made as of _____ by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the COUNTY, and **Kurisu, LLC**, a limited liability company authorized to do business in the State of Florida, hereinafter referred to as CONSULTANT, whose Federal I.D. number is 46-4410124.

WITNESSETH:

WHEREAS, the COUNTY desires to retain the professional services of a firm experienced in providing consulting, design and maintenance of a Japanese garden; and

WHEREAS, the COUNTY has selected CONSULTANT, in accordance with the provisions of the Florida Statutes, and CONSULTANT has agreed to provide the professional services, in accordance with the terms of this Contract, as may be required and directed from time to time by COUNTY, in connection with the Project.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the COUNTY and the CONSULTANT agree as follows:

SECTION 1 - BASIC SERVICES OF CONSULTANT

1.1 BASIC SERVICES.

The basic services to be provided by the CONSULTANT and the scope of work for this Contract are described in **Exhibit A** to this Contract which is incorporated herein.

1.2 FEE.

The fees associated with the Basic Services are described in **Exhibit A** to this Contract.

1.3 DISPUTES AND SPECIFIC PERFORMANCE.

All services will be performed by the CONSULTANT to the satisfaction of the County's Representative. The COUNTY will decide all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of the Contract, the prosecution and fulfillment of the services hereunder and the character, quality, amount and value thereof. At all times the CONSULTANT shall continue to perform the services required under this Contract and maintain its schedule. In no event will the filing of a claim or the resolution or litigation thereof through administrative procedures or the courts relieve the CONSULTANT from the obligation to timely

perform the services required hereunder.

SECTION 2 - ADDITIONAL SERVICES OF CONSULTANT

2.1 NOTIFICATION.

CONSULTANT shall notify COUNTY immediately in writing of all changes to the approved scope of work attached hereto as **Exhibit A** which may increase or decrease the CONSULTANT's cost or the duration of CONSULTANT's services.

2.2 CHANGE AUTHORIZATION.

Before making any additions or deletions to the work or undertaking any changes or revisions to such work, the parties shall negotiate any necessary cost changes and shall enter into a Change Authorization covering such work and compensation.

Notice of a request for additional compensation shall be given in writing to COUNTY within five (5) working days from the date on which CONSULTANT knows, or should reasonably know, of the event giving rise to such request. Failure to give such notice shall constitute a waiver of CONSULTANT's right to additional consideration.

SECTION 3 - COUNTY'S RESPONSIBILITIES

COUNTY shall do the following in a timely manner so as not to delay the services of the CONSULTANT:

3.1 COUNTY REPRESENTATIVE.

The COUNTY will designate in writing a person to act as COUNTY's representative with respect to the services to be rendered under this Contract. Such person will have complete authority to transmit instructions, receive information, interpret and define COUNTY's policies and decisions with respect to CONSULTANT's services under this Contract.

3.2 CONTRACT REQUIREMENTS.

As requested, in writing by CONSULTANT, the COUNTY will provide all criteria and full information as to COUNTY's requirements under this Contract.

3.3 ACCESS.

The COUNTY will arrange for access to and make provisions where necessary for CONSULTANT to enter upon property or inspect COUNTY records as required for CONSULTANT

to perform services under this Contract.

3.4 REVIEW.

The COUNTY will examine all studies, reports, proposals and other documents presented by the CONSULTANT. If requested by CONSULTANT, the COUNTY will render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of CONSULTANT. However, said decisions shall create no liability on the part of COUNTY for approval or acceptance.

3.5 NOTICE.

The COUNTY will give prompt written notice to CONSULTANT whenever COUNTY observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services.

SECTION 4 - TERM

The Contract term shall commence after approval and execution of this Contract by both parties but no earlier than October 1, 2017, and continue for a term of three (3) years with two (2) one-year options for renewal upon the agreement of the parties.

SECTION 5 – FEE AND PAYMENTS TO CONSULTANT

5.1 FIXED PRICE.

Whenever possible, the scope of services shall be thoroughly defined and outlined prior to its authorization. The COUNTY and CONSULTANT shall mutually agree to a fixed price for services to be rendered and a detailed scope of services. Prior to execution of a fixed price authorization, the CONSULTANT shall have submitted a detailed cost proposal including the estimated labor hours, labor rates, subcontractual services, out of pocket expenses and other related costs supporting the proposed work. Fixed price contracts shall include all services including labor, reimbursables, overhead and profit as part of the fixed price.

5.2 SUBCONTRACTS.

Sub-contractual services shall be included at the actual fees proposed by the subconsultant and accepted by the COUNTY. Subcontractual services shall be approved by the COUNTY in writing prior to performance of the sub-contractual work.

5.3 LABOR RATES.

Labor rates of CONSULTANT and any subconsultants shall not exceed the actual hourly raw labor rates for services rendered by personnel directly engaged on COUNTY projects, multiplied by an overall overhead and profit factor. The labor rates and overhead and profit factors are to be provided and are subject to audit, upon request.

5.4 “NOT TO EXCEED” LIMITS.

When a service is to be compensated for on a time charge/not to exceed basis, the CONSULTANT will submit a not to exceed budget to the COUNTY for prior approval based on estimated labor hours and labor rates plus subcontractual services, out of pocket expenses and other related costs supporting the proposed work. The COUNTY shall not be obligated to reimburse the CONSULTANT for costs incurred in excess of the total not to exceed cost amount. The CONSULTANT shall notify the COUNTY in writing when 90% of the not to exceed amount has been reached.

- 5.4.1 Exhibit A. The COUNTY agrees to pay the CONSULTANT compensation for services rendered as set forth in **Exhibit A.**

5.5 PROGRESS PAYMENTS.

The CONSULTANT will bill the COUNTY at the amounts set forth for services rendered toward the completion of the scope of work. Payments will generally be made either after completion of scheduled services on a monthly basis or after acceptance of specified deliverables.

5.6 SCHEDULE.

CONSULTANT and COUNTY shall agree on a Schedule incorporating scope of work references, deliverables, and milestones. A pay application with percent complete of each activity shall be included with each billing. A schedule update of CONSULTANT's work shall be included with each billing, if requested.

5.7 APPROVAL PROCESS.

Pay applications received from the CONSULTANT pursuant to this Contract will be reviewed and approved by the initiating COUNTY department, indicating that services have been received, and then will be sent to the Finance Department for payment. Invoices must reference the Service Authorization and current project number. Invoices will normally be paid within thirty (30) days following the department's approval.

5.8 EXPENSES.

If Out-of-pocket expenses are authorized, they will be reimbursed up to the not-to-exceed amount identified on each Service Authorization. Out-of-pocket expenses mean the actual expenses expected to be incurred by the CONSULTANT or CONSULTANT's subconsultants directly or

indirectly in connection with the work such as expenses for: transportation and subsistence incidental thereto; external reproduction of reports, drawings, specifications, bidding documents, and similar project related items. Charges for other specialized equipment shall be determined on an individual basis subject to approval of the COUNTY. All reimbursable expenses will be estimated up front at the time of negotiating each Service Authorization. All requests for payment of out-of-pocket expenses eligible for reimbursement under the terms of this Contract shall include copies of paid receipts, invoices, or other documentation acceptable to the Palm Beach County Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the scope of work described in each Service Authorization. Any travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Contract will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.

5.9 FINAL PAYMENT.

In order for both parties to close their books and records, the CONSULTANT will clearly state Final on the CONSULTANT's final/last billing to the COUNTY. This shall constitute CONSULTANT's certification that all services have been properly performed and all charges and costs have been invoiced to COUNTY. Since this account will thereupon be closed, any and other further charges, if not properly included on this final invoice, are waived by the CONSULTANT.

5.10 RIGHT OF OFFSET.

Except for issues arising from contract indemnification provisions, the COUNTY will have the right to retain out of any payment due the CONSULTANT under this Contract an amount sufficient to satisfy any amount due and owing to the COUNTY by the CONSULTANT. The COUNTY may withhold payment on any invoice in the event that the CONSULTANT is in default under any provision of this Contract as of the time of processing the invoice or as of the time payment is made available on the invoice. This right to withhold will continue until such time as the default has been cured, and, upon cure, the COUNTY will have the right to retain an amount equal to the damages suffered as a result of the default.

SECTION 6 – SPECIAL CONDITONS APPLICABLE TO MAINTENANCE SERVICES

CONSULTANT shall comply with the special conditions for maintenance services attached hereto and incorporated herein as **Appendix 1**.

SECTION 7 - GENERAL CONSIDERATIONS

7.1 STANDARD OF CARE.

7.1.1 The CONSULTANT has, during the selection and negotiation process which has preceded this Contract, represented to COUNTY that the CONSULTANT is possessed of that level of skill, knowledge, experience and expertise that is commensurate with firms of national repute in

the areas of practice required for this Contract. CONSULTANT acknowledges that COUNTY has relied on CONSULTANT's representations of skill, knowledge, experience and expertise. By executing this Contract, CONSULTANT agrees that CONSULTANT will exercise that degree of care, knowledge, skill, and ability as other professionals possessing the degree of skill, knowledge, experience and expertise which CONSULTANT has claimed. CONSULTANT shall perform such duties as may be assigned without neglect. CONSULTANT accepts the relationship of trust and confidence established by this Contract, and covenants with COUNTY to cooperate with COUNTY and to utilize CONSULTANT's skill, efforts and judgment commensurate with firms of national repute in the areas of practice required for this Contract. CONSULTANT agrees to perform each assignment in an efficient and economical manner consistent with the COUNTY's interests and consistent with the COUNTY's stated objectives and recognized professional standards.

CONSULTANT further contracts with COUNTY to furnish its professional skill and judgment with due care in accordance with applicable Federal, State and local laws, codes and regulations as amended and supplemented which are in effect on the date of this Contract first written.

Although specific provisions of this Contract refer to some services with terms such as complete, accurate, full extent, highest, in detail, verify, certify, represent, substantiate, inspect, monitor, discover, as often as necessary, approve, accept, reject, and enforce, such terms and similar terms shall be qualified by the standard of care stated in the preceding two paragraphs.

7.1.3 Acceptance of the work by the COUNTY or Contract termination does not constitute COUNTY approval and will not relieve the CONSULTANT of the responsibility for subsequent corrections of any errors and/or omissions and the clarification of any ambiguities. The CONSULTANT shall make all necessary revisions or corrections resulting from errors and/or omissions on the part of the CONSULTANT without additional compensation.

7.2 TERMINATION.

This Contract may be canceled by the CONSULTANT upon sixty (60) days prior written notice to the COUNTY in the event of failure by the COUNTY to perform in accordance with the terms of this Contract through no fault of the CONSULTANT. It may also be terminated, in whole or in part, by the COUNTY, with or without cause, immediately upon written notice to the CONSULTANT. Unless the CONSULTANT is in breach of this Contract, the CONSULTANT shall be paid for services rendered to the COUNTY's satisfaction through the date of termination. In no event, whether termination is with or without cause, shall the COUNTY be liable for any lost profits, lost opportunity damage, or consequential damages. After receipt of a Termination Notice and except as otherwise directed by the COUNTY, the CONSULTANT shall:

- a. Stop work on the date and to the extent specified.
- b. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.

- c. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
- d. Continue and complete all parts of the work that have not been terminated.

Should a termination for breach later be declared wrongful, said termination shall be considered and treated as a termination without cause.

Notwithstanding any breach of this Contract by either party nor the status of payment to the CONSULTANT, nor the COUNTY's exercise of its rights of termination, it is hereby agreed between the parties that copies of any and all property, work product, documentation, reports, computer systems and software, schedules, graphs, outlines, books, manuals, logs, files, deliverables, photographs, videos, tape recordings or data relating to this Contract which have been created as a part of CONSULTANT's services or authorized by the COUNTY as a reimbursable expense, whether generated directly by the CONSULTANT, or by or in conjunction or consultation with any other party whether or not a party to this Contract, whether or not in privity of contract with the COUNTY or CONSULTANT, and wherever located shall be the property of the COUNTY.

7.3 TRUTH-IN-NEGOTIATIONS CERTIFICATE.

Signature of this Contract by the CONSULTANT shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the CONSULTANT's most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The COUNTY shall exercise its rights under this Certificate within three (3) years following final payment. COUNTY has the authority and right to audit CONSULTANT's records under this provision.

7.4 PERSONNEL

- 7.4.1 Representations. The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any conflicting relationship with the COUNTY.

All of the services required herein shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to

perform such services.

Any changes or substitutions in the CONSULTANT's key personnel or subconsultants must be made known to the COUNTY's representative and written approval must be granted by the COUNTY before said change or substitution can become effective.

The CONSULTANT represents that all professional design services shall be performed by skilled and competent personnel to the professional standard of care set forth in Section 7.1 above.

All of the CONSULTANT's personnel (and all subcontractors) will comply with all COUNTY requirements covering conduct, safety, and security while on COUNTY premises.

7.4.2 CONSULTANT's Representative. Concurrent with its fee proposal, the CONSULTANT shall advise the COUNTY of the name of its proposed Project Manager. The Project Manager shall devote such time as may be necessary and as may be appropriate to and consistent with full and timely performance of this Contract. This individual shall be assigned to the Contract through final completion of the Contract. The Project Manager shall not be removed from his/her responsibilities on this Contract without the written consent of the COUNTY. The COUNTY shall retain reasonable right of approval of the CONSULTANT's designated Project Manager and the right to require the CONSULTANT to replace its designated Project Manager with another individual acceptable to the COUNTY.

7.4.3 Criminal History Records Check. Pursuant to County Code, Section 2-371 – 2-377, the Palm Beach County Criminal History Records Check Ordinance, the COUNTY will conduct a finger print based criminal history record check on all employees of consultants, subconsultants, vendors, repair persons and delivery persons entering a facility determined to be either a Critical Facility ("Critical Facilities") or criminal justice information facility (CJI Facility). Critical Facilities and CJI Facilities and the corresponding list of disqualifying offenses are identified in Resolution R2013-1421, and is available upon request. In October, 2013, compliance with the requirements of the U.S. Federal Bureau of Investigations Criminal Justice Information (CJI) Security Policy was added to the Ordinance and has a broad list of disqualifying offenses. The CONSULTANT understands that it is solely responsible for the financial, schedule and/or staffing implications of compliance with the Code, and represents and warrants that its fee includes any direct or indirect costs (not including the FDLE/FBI fees which will be paid directly by the COUNTY) of compliance with this County Code.

Individuals passing the background check will be issued a badge. CONSULTANT shall make every effort to collect the badges of its employees and its subconsultants'

employees upon conclusion of the contract work and return them to the COUNTY. If the CONSULTANT or its subconsultant terminates an employee who has been issued a badge, the CONSULTANT must notify the COUNTY within 2 hours. At the time of termination, the CONSULTANT shall retrieve the badge and return it to the COUNTY in a timely manner. The COUNTY reserves the right to suspend any consultant that; 1) is not in compliance with the requirements of County Code Section 2-371-2-377 as amended, 2) does not immediately contact the COUNTY regarding a terminated employee or subconsultant employee, or 3) fails to make a good faith effort in attempting to comply with the badge retrieval policy.

7.5 SBE PARTICIPATION.

The Palm Beach County Board of County Commissioners has established a minimum goal for Small Business Enterprise (SBE) participation of 15% on all COUNTY solicitations. CONSULTANT has committed to providing not less than 100% SBE participation under this Contract.

The CONSULTANT agrees to abide by all provisions of the Palm Beach County Code establishing the SBE Program, as amended, and understands that failure to comply with any of the requirements will be considered a breach of this Contract.

The CONSULTANT incorporates Schedule 1 (participation of SBE-M/WBE Contractors) and Schedule 2 (Letter of Intent) attached hereto and made a part hereof, the names addresses, scope of work, percentage or dollar value of the SBE-M/WBE participation on Schedule 1 and the Letter of Intent, Schedule 2, signed by each of the listed SBE-M/WBE sub-consultants on Schedule 1 agreeing to perform the contract at the listed percentage or dollar value. The CONSULTANT understands that each SBE firm utilized on this Contract must be certified by Palm Beach County in order to be counted toward the SBE participation goal.

The CONSULTANT understands that it is the responsibility of the Department letting the Contract and OSBA to monitor compliance with the Palm Beach County Code SBE requirements. In that regard, the CONSULTANT agrees to furnish progress payment reports to both parties on the progress of the SBE-M/WBE participation on each pay application submitted.

The CONSULTANT further agrees to provide OSBA with a copy of its contract with the SBE sub-consultant or any other related documentation upon request.

After Contract award, the CONSULTANT will only be permitted to replace a certified SBE subcontractor who is unwilling or unable to perform. Such substitution must be done with other certified SBEs in order to maintain the proposed SBE percentages submitted with the CONSULTANT's proposal. Requests for substitutions must be submitted to the department issuing the request for proposal and the OSBA.

The CONSULTANT understands that it is prohibited from making any agreements with the

SBE in which the SBE promises not to provide subconsultant quotations to other proposers or potential proposers.

The CONSULTANT agrees to maintain all relevant records and information necessary to document compliance with the Palm Beach County Code and will allow the COUNTY to inspect such records.

7.6 NON-DISCRIMINATION.

The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

CONSULTANT has submitted to COUNTY a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R-2014-1421, as amended, or in the alternative, if the CONSULTANT does not have a written non-discrimination policy, it has acknowledged through a signed statement provided to COUNTY that CONSULTANT will conform to the COUNTY's non-discrimination policy as provided in R-2014-1421, as amended.

7.7 INDEPENDENT CONTRACTOR RELATIONSHIP.

The CONSULTANT is, and shall be, in the performance of all work services and activities under this Contract, an independent contractor, and not an employee, agent, representative or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONSULTANT's sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees, sub-consultants and suppliers perform the work, and in all respects the CONSULTANT's relationship and the relationship of its employees to the COUNTY shall be that of an independent contractor and not as employees or agents of the COUNTY.

The CONSULTANT does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

The CONSULTANT represents that all subconsultant agreements entered into shall incorporate by reference the terms and conditions of this Contract, and further warrants that the COUNTY is an intended express third party beneficiary of any such subcontract.

7.8 CONTINGENT FEES.

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or

firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award of making of this Contract.

7.9 AUTHORITY TO PRACTICE.

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY upon request.

All final plans, documents, reports, studies and other data prepared by the CONSULTANT shall bear the professional's seal/signature, in accordance with the applicable Florida Statutes.

7.10 FEDERAL AND SALES TAX.

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY. The CONSULTANT is not authorized to use the COUNTY's Tax Exemption Number in securing such materials.

The CONSULTANT shall be responsible for payment of its own and its share of its employee's payroll, payroll taxes, and benefits with respect to this Contract.

7.11 AVAILABILITY OF FUNDS.

The COUNTY's performance and obligation to pay under this Contract is contingent upon an annual appropriation for its purpose by the Board of County Commissioners.

7.12 INSURANCE.

7.12.1 Requirements. CONSULTANT shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverages and limits (including endorsements), as described herein. The requirements contained herein, as well as COUNTY's review or acceptance of insurance maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONSULTANT under this Contract.

7.12.2 Commercial General Liability. CONSULTANT shall agree to maintain Commercial General Liability at a limit of liability not less than \$1,000,000 Each Occurrence. CONSULTANT shall provide this coverage on a primary basis.

7.12.2.1 Pollution – Herbicide/Pesticide Applicator – Legal Liability:

CONSULTANT shall agree to maintain Pollution Legal & Remediation Liability at a minimum limit not less than \$500,000 per occurrence / \$1,000,000 annual aggregate providing coverage for damages including, but not limited to, third-party liability, clean up, corrective action including assessment, remediation and defense costs. In the event the policy includes a self-insured retention or deductible in excess of \$10,000, the COUNTY reserves the right to review and request a copy of the CONSULTANT's most recent annual report or audited financial statements. **This coverage shall be endorsed to include Palm Beach County as an Additional Insured.**

Alternatively, this requirement may be satisfied with the inclusion of the "CG22 64 Pesticide or Herbicide Applicator Coverage Endorsement" to the Commercial General Liability.

Note: When applicable, if the designated sub-contractor holds the requisite herbicide/pesticide applicator's license then proof of General Liability without the endorsement must be provided by the CONSULTANT, PLUS proof of General Liability with the endorsement must be provided by the designated sub-contractor.

- 7.12.3 Business Automobile Liability. CONSULTANT shall maintain Business Automobile Liability at a limit of liability not less than \$1,000,000 Each Occurrence for all owned, non-owned and hired automobiles. In the event CONSULTANT doesn't own any automobiles, the Business Auto Liability requirement shall be amended allowing CONSULTANT to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. CONSULTANT shall provide this coverage on a primary basis.
- 7.12.4 Worker's Compensation Insurance & Employers Liability. CONSULTANT shall maintain Worker's Compensation & Employers Liability in accordance with Florida Statute Chapter 440. CONSULTANT shall provide this coverage on a primary basis.
- 7.12.5 Professional Liability. CONSULTANT shall maintain Professional Liability, or equivalent Errors & Omissions Liability, at a limit of liability not less than \$1,000,000 Per Occurrence. When a self-insured retention (SIR) or deductible exceeds \$25,000, COUNTY reserves the right, but not the obligation, to review and request a copy of CONSULTANT's most recent annual report or audited financial statement. For policies written on a Claims-Made basis, CONSULTANT shall maintain a Retroactive Date prior to or equal to the effective date of this Contract. The retro date shall be shown on the certificate. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the life of this Contract, CONSULTANT shall purchase a SERP with a minimum reporting period not less than 3 years. **The requirement to purchase a**

SERP shall not relieve the CONSULTANT of the obligation to provide replacement coverage.

- 7.12.6 Additional Insured. CONSULTANT shall endorse the COUNTY as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read “Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents”. CONSULTANT shall provide the Additional Insured endorsements coverage on a primary basis.
- 7.12.7 Waiver of Subrogation. CONSULTANT hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONSULTANT shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should CONSULTANT enter into such an agreement on a pre-loss basis.
- 7.12.8 Certificate(s) of Insurance. Prior to execution of this Contract, CONSULTANT shall deliver to the COUNTY and to the Insurance Tracking Services (ITS) a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverage required by this Contract have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation or non-renewal of coverage.

Certificates for the COUNTY shall be addressed to:

Palm Beach County Board of County Commissioners,
c/o Capital Improvements Division,
2633 Vista Parkway,
West Palm Beach, FL 33411-5604,

and for ITS:

Certificate Holder Address, (Certificates need to include the following as the Certificate Holder)

Palm Beach County
c/o Insurance Tracking Services, Inc. (ITS)
P.O. Box 20270
Long Beach, CA 90801

Email: pbc@instracking.com or facsimile: (562) 435-2999

7.12.9 Renewal Policies. The CONSULTANT shall promptly deliver to ITS a certificate of insurance with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the terms specified herein. Such certificate shall be delivered to ITS not less than five (5) business days before the expiration date of any policy.

7.12.10 Umbrella or Excess Liability. If necessary, CONSULTANT may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest Each Occurrence limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an Additional Insured on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a Follow-Form basis.

7.12.11 Right to Review. COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Contract. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

7.13 OWNERSHIP OF DOCUMENTS, COMPLIANCE WITH THE PUBLIC RECORDS LAW, AND PROTECTION OF CONFIDENTIAL INFORMATION.

7.13.1 Ownership of Documents. The CONSULTANT shall deliver to the COUNTY, for acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Contract.

All information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by the CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the COUNTY's prior written consent unless required by a lawful order.

All drawings, maps, sketches, programs, data base, reports and other data developed, utilized, or purchased under this Contract for a COUNTY project or at the COUNTY's expense shall be and remain the COUNTY's property and may be reproduced and reused at the discretion of the COUNTY. However, CONSULTANT will incur and assume no liabilities for reuse unless CONSULTANT agrees with said

reuse and is compensated for any revisions necessary to update plans for Code compliance, site adaptations, or COUNTY requested changes.

If COUNTY requests in writing, the CONSULTANT shall return to COUNTY any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately.

The COUNTY and the CONSULTANT shall comply with the provisions of Chapter 119 Florida Statutes (Public Records Law).

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representation made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

7.13.2 Recordkeeping. The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work under this Contract for at least three (3) years after completion or termination of this Contract. Upon ten (10) business days' prior written notice to CONSULTANT, the COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONSULTANT's place of business.

7.13.3 Confidentiality of Information and Compliance with the Public Records Law.

7.13.3.1 Public Records Requests. Under Chapter 119, Florida Statutes (the Florida Public Records Law), a request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the CONSULTANT receives a Public Records Request, the CONSULTANT agrees that it will not release any records, but instead immediately re-direct the request to the COUNTY for fulfillment. The CONSULTANT agrees to cooperate with any COUNTY request to the CONSULTANT for any records in the CONSULTANT's possession that the COUNTY believes to be a public record.

7.13.3.2 Records Exempt from the Public Records Laws. The Florida Public Records Law provides for certain exemptions to Florida's Public Records Law to protect the security of specific governmental facilities, employees and visitors. For the same security reasons, the COUNTY has the statutory obligation to protect such records from public disclosure and only disclose confidential information to a licensed engineer, consultant or contractor. The purpose of this Section is to facilitate the CONSULTANT's work by making specific documents available to individuals/firms while implementing controls on the distribution of records or

information which is confidential and/or exempt from the Florida Public Records Law.

7.13.3.3 Confidential Information. For purposes of this Section, "Confidential Information" shall include all information or material that is confidential or exempt according to the Florida Public Records Law. The exemptions most relevant to the CONSULTANT include, but are not limited to:

- Plans, blueprints, drawings and diagrams which depict the internal layout and structural elements of a building or other structure owned or operated by the COUNTY;
- Security system plans records, information, photographs, audio and visual representations, schematic diagrams, surveys, recommendations or consultations relating directly to the physical security of the facility or revealing security systems;
- Threat assessments;
- Emergency evacuation plans;
- Sheltering arrangements; and/or
- Manuals for security personnel, emergency equipment or security training.

The CONSULTANT has an obligation to maintain the confidential status of Confidential Information. The CONSULTANT shall hold and maintain the Confidential Information in the strictest confidence for the sole and exclusive benefit of the COUNTY. The CONSULTANT shall restrict access to Confidential Information to: 1) the CONSULTANT's employees, and/or 2) licensed architects, engineers, contractors, subcontractors (Third Parties) for the sole purpose of providing services related to the Contract. Prior to releasing any Confidential Information to a Third Party, the CONSULTANT shall require those Third Parties to execute nondisclosure restrictions at least as protective as those in this Contract, and maintain a list of any Third Party to which the CONSULTANT has distributed Confidential Information. Other than as authorized above, the CONSULTANT **shall not, without prior written approval of COUNTY, publish, copy, or otherwise disclose to others any Confidential Information.**

7.13.3.4 Disclosure Warning. If Confidential Information is in written form, the CONSULTANT shall label or stamp the materials as they are created with the Disclosure Warning described below on each and every sheet of plans, documents or reports that contains exempt information. If the CONSULTANT is distributing Confidential Information to authorized recipients, the materials and the correspondence related thereto should contain the following disclosure warning:

DISCLOSURE WARNING. THIS DOCUMENT IS EXEMPT AND CONFIDENTIAL UNDER SEC. 119.071, FLORIDA STATUTES. ANY ENTITY OR PERSONS RECEIVING SUCH INFORMATION SHALL MAINTAIN THE EXEMPT AND CONFIDENTIAL STATUS OF THE

INFORMATION UNLESS OTHERWISE AUTHORIZED BY THE COUNTY. THESE DOCUMENTS SHALL NOT BE DISTRIBUTED, LOANED OR COPIED WITHOUT THE WRITTEN PERMISSION OF THE COUNTY IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF FLORIDA LAW. THE COUNTY MUST BE ADVISED IMMEDIATELY AS TO ANY CHANGES IN CUSTODIAN FROM THOSE PERSONS LISTED IN CORRESPONDENCE FOR ORIGINAL DISTRIBUTION, IF THE DOCUMENTS ARE LOST OR STOLEN, OR IF THERE IS IMPROPER DISCLOSURE OR UNAUTHORIZED USE OF THE INFORMATION IN THE DOCUMENT. UPON COMPLETION OF USE, WORK, PROJECT, OR CONTRACT, THE CONSULTANT SHALL SHRED OR BURN ANY DUPLICATE RECORDS.

- 7.13.3.5 Identifying Correspondence that May Contain Exempt or Confidential Information. In order to assist in the identification of electronic records (email) which may be exempt from public records requests and protect information that is exempt from disclosure, the CONSULTANT (as either the writer or receiver of an electronic document which may contain confidential or exempt information) must use the letters "PREX" (in caps) as the *first* four letters of the subject line of the electronic document. The PREX identifier should be used if the email contains confidential and/or exempt information in the body and/or an attachment.
- 7.13.3.6 Notification of Improper Disclosure. COUNTY must be notified immediately if the Confidential Information is lost or stolen or of any improper disclosure or unauthorized use of the Confidential Information. The CONSULTANT shall make a report to the COUNTY not more than seven (7) business days after the CONSULTANT learns of such an improper disclosure or unauthorized use of the Confidential Information. The CONSULTANT's report shall identify, to the extent known, the nature of the improper disclosure or unauthorized use, the Confidential Information disclosed or used, who made the disclosure of or used the information, what the CONSULTANT has done or shall do to mitigate any harmful effects of the improper disclosure or unauthorized use, and what corrective action the CONSULTANT has taken or shall take to prevent future similar unauthorized use or improper disclosure. The CONSULTANT shall provide any other such information about the unauthorized use or improper disclosure as reasonably requested by the COUNTY. The CONSULTANT shall take all steps the COUNTY deems advisable to mitigate, resolve and/or prevent the unauthorized use or improper disclosure of the Confidential Information.
- 7.13.3.7 Survival. The nondisclosure provisions of this Section shall survive the termination of this Contract. The CONSULTANT's duty to hold Confidential Information in confidence shall remain in effect until COUNTY sends the CONSULTANT written notice releasing the CONSULTANT from the provisions of this Section,
- 7.13.3.8 Enforcement. The CONSULTANT understands that non-compliance with the terms of this Section may result in debarment pursuant to the Palm Beach County

Code as well as subject itself to any other remedies available to the COUNTY at law or in equity.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT: BUSINESS AND COMMUNITY AGREEMENTS MANAGER, FACILITIES DEVELOPMENT & OPERATIONS, 2633 VISTA PARKWAY, WEST PALM BEACH, FL 33411 OR BY EMAIL AT FDORECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-233-0220.

7.14 REMEDIES.

This Contract shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Contract will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

COUNTY and CONSULTANT agree that the notice and cure provisions of Florida Statute Chapter 558 shall not apply to this Contract.

Pursuant to Section 558.0035 Florida Statutes, the CONSULTANT is the responsible party for the professional services it agrees to provide under this Contract. No individual professional employee, agent, director, officer or principal may be individually liable for negligence arising out of this Contract, as long as the CONSULTANT maintains the professional liability insurance required under this Contract and as long as any damages are solely economic in nature and the damages do not extend to personal injuries or property not subject to this Contract.

7.15 INDEMNIFICATION.

The CONSULTANT shall indemnify and hold harmless the COUNTY, 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 CONSULTANT, and other persons employed or utilized by the CONSULTANT, in the performance of this Contract.

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, each party shall bear its own attorney's fees, court costs and all expenses (including taxes and, without limitation, all such fees, costs, and expenses incident to appeals) incurred in that action or proceeding.

This section shall survive termination of this Contract.

7.16 CONFLICT OF INTEREST.

The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III of Florida Statutes, and the Palm Beach County Code of Ethics. CONSULTANT shall provide COUNTY with an executed Conflict of Interest Disclosure Form, attached as **Exhibit D** and incorporated herein.

Any actual or potential conflict between the CONSULTANT's interests and the CONSULTANT's performance of the services provided hereunder must be addressed by the process established in **Exhibit D**. Unless waived by the COUNTY in writing (with or without conditions attached to said waiver) or unless written approval from the COUNTY is received prior to the performance of any conflicting or potentially conflicting services, such conflicting services shall be a breach of this Contract. The CONSULTANT shall abide by any terms or conditions contained within a waiver or approval, if provided. If the COUNTY declines to approve a waiver, the CONSULTANT shall not enter into the conflicting contract, association, interest or circumstance; and if such has already occurred, CONSULTANT shall be in breach of this Contract. Upon such a breach, COUNTY shall be entitled to all remedies at law or in equity including termination as set forth in Section 7.2.

7.17 EXCUSABLE DELAYS.

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes beyond the control of the CONSULTANT or its subcontractors and without their fault or negligence. Such causes may include, under relevant circumstances: acts of God; natural or public health emergencies; strikes not within CONSULTANT's work force, company or agent's thereof; freight embargoes; and abnormally severe and unusual weather conditions.

Upon the CONSULTANT's request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if in the opinion of the COUNTY the CONSULTANT's failure to

perform was without it or its subcontractors fault or negligence, the Contract shall be revised accordingly; subject to the COUNTY's rights to change, terminate, or stop any or all of the work at any time.

7.18 ARREARS.

The CONSULTANT shall not pledge the COUNTY's credit or make it a guarantor of payment of surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

7.19 MODIFICATIONS OF WORK.

The COUNTY reserves the right to make changes in the work, including alterations, reductions therein or additions thereto. Upon receipt by the CONSULTANT of the COUNTY's notification of a contemplated change, the CONSULTANT shall promptly: (1) provide an estimate for the increase or decrease in cost due to the contemplated change, (2) notify the COUNTY of any estimated change in the completion date and (3) advise the COUNTY in writing if the contemplated change shall affect the CONSULTANT's ability to meet the completion dates or schedules of this Contract.

If the COUNTY so instructs in writing, the CONSULTANT shall suspend work on that portion of the Work affected by a contemplated change, pending the COUNTY's decision to proceed with the change.

If the COUNTY elects to make the change, the COUNTY shall issue an amendment to the applicable Service Authorization and the CONSULTANT shall not commence work on any such change until such written amendment has been issued.

7.20 NOTICES.

All notices required in this Contract if sent to the COUNTY shall be mailed to:

John A. Chesher, PE, Director
PBC Capital Improvements Division
2633 Vista Parkway
West Palm Beach, FL 33411-5604

with copy to:

Audrey Wolf, Director
PBC Facilities Development and Operations
2633 Vista Parkway
West Palm Beach, FL 33411-5603

and if sent to the CONSULTANT shall be mailed to:

Hoichi Kurisu, President
Kurisu, LLC
3987 North Mississippi Avenue
Portland, Oregon 97227

7.21 SEVERABILITY.

If any term or provision, or portion of a provision, of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the remaining parts of any provision or the application of such terms or provision, or portion of a provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision, or portion of a provision, of this Contract shall be deemed valid and enforceable to the extent permitted by law.

7.22 ENTIRETY OF CONTRACTUAL AGREEMENT.

7.22.1 Entire Agreement. The COUNTY and the CONSULTANT agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

7.22.2 Exhibits. This Contract includes the following exhibits, which are attached hereto and made a part hereof:

- Appendix 1 - Special Conditions for Maintenance Services
- Exhibit A - Scope of Work and Fee
- Exhibit B - SBE-M/WBE Schedules 1 and 2
- Exhibit C - Insurance Certificates
- Exhibit D - Conflict of Interest Disclosure Form

7.23 SUCCESSORS AND ASSIGNS.

The COUNTY and the CONSULTANT each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the COUNTY nor the CONSULTANT shall assign, sublet, convey or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and the CONSULTANT.

7.24 PUBLIC ENTITY CRIMES.

As provided in F.S. 287.132-133, by entering into this Contract or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

7.25 OFFICE OF THE INSPECTOR GENERAL.

Palm Beach County has established the Office of the Inspector General, Palm Beach County Code, Section 2-421 – 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and audit, investigate, monitor, and inspect the activities of the CONSULTANT, its officers, agents, employees, and lobbyists in order to ensure compliance with contract specifications and detect corruption and fraud. All consultants and parties doing business with the COUNTY and receiving County funds shall fully cooperate with the Inspector General including allowing access to records relating to this Contract.

7.26 SCRUTINIZED COMPANIES (when contract value is greater than \$1 million).

As provided in F.S. 287.135, by entering into this Contract or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies with Activities in Sudan List or Scrutinized Companies with Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473, or on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725, or is engaged in business operations in Cuba or Syria.

If the COUNTY determines, using credible information available to the public, that a false certification has been submitted by CONSULTANT, this Contract may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Contract shall be imposed, pursuant to F.S. 287.135.

7.27 COMPLIANCE WITH LAWS AND REGULATIONS.

The CONSULTANT shall comply with all laws, policies and procedures, ordinances and regulations applicable to the services contemplated herein. CONSULTANT is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered under this Contract.

7.28 NO THIRD PARTY BENEFICIARY.

Except as specifically and expressly provided for herein, no provision of this Contract

is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Contract.

THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Contract on behalf of the COUNTY and CONSULTANT has hereunto set its hand the day and year above written.

ATTEST:
SHARON R. BOCK, Clerk and Comptroller

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Paulette Burdick, Mayor

APPROVED AS TO TERMS AND
AND CONDITIONS

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: *[Signature]*
Director, FDO

By: *[Signature]*
County Attorney

WITNESS:

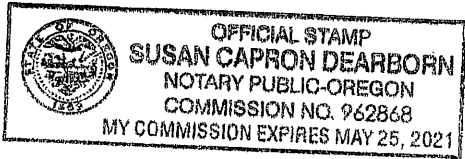
[Signature]
Signature

KURISU, LLC:
CONSULTANT
[Signature]
Signature

Susan Dearborn
Name (type or print)

HOICHI KURISU
Name (type or print)

OWNER / PRESIDENT
Title



APPENDIX 1

SPECIAL CONDITIONS FOR MAINTENANCE SERVICES

When performing the maintenance services under this Contract, the CONSULTANT shall comply with the following special conditions:

1. Consultant Maintenance Representative.

The CONSULTANT shall designate a maintenance representative who shall be physically available and/or on-site forty (40) hours per week; those hours shall be distributed in a reasonable manner to manage the CONSULTANT's maintenance operations as outlined herein.

2. Maintenance Personnel.

2.1 CONSULTANT shall indoctrinate and train all maintenance employees in the schedules, philosophies, mission and public relations concerns of the COUNTY, the Parks and Recreation Department and the Morikami Museum and Japanese Gardens. CONSULTANT's maintenance personnel shall conduct all work operations and dealings with the public in a courteous manner. The COUNTY and Department's Mission Statement can be found at:

www.pbcgov.com/PubInf/Admin/Mission.htm
www.pbcgov.com/parks/general/about_pbc.htm

2.2 CONSULTANT shall be responsible for monitoring employee work performance, managing time and materials, determining personnel needs, selecting, training and supervising subordinate personnel.

2.3 The CONSULTANT shall hire, employ and properly train all personnel necessary to maintain the authentic Japanese trimming, pruning and training operations. The CONSULTANT shall clearly define reporting responsibilities of staff, and provide the COUNTY with a staff organizational chart.

2.4 All staff shall be uniformed and present a neat and orderly appearance.

3. Key Staff

3.1 The CONSULTANT shall retain a supervisor who shall have at least five (5) years of full time supervisory experience in Japanese gardens or public or private botanical gardens maintenance which must include traditional Japanese style trimming, pruning and training of shrubs and trees and who will be responsible for ensuring that all scheduled tasks are completed on a daily basis.

3.2 CONSULTANT's staff shall perform all scheduled tasks in accordance with the scope of the Contract and standards provided herein.

3.3 The COUNTY shall have the right to approve the individual(s) the CONSULTANT intends to hire to fill the position of supervisor (regardless of the titles given for such positions by CONSULTANT). Such approval shall not be unreasonably withheld. The COUNTY may request a change in the aforementioned personnel if the individual(s) are not performing up to the standards expected in the Contract or the CONSULTANT's proposal.

4. Equipment Inventory

The COUNTY shall furnish certain COUNTY assets as described in **Attachment C to this Appendix 1** for CONSULTANT's non-exclusive use for the provision of maintenance services at the Morikami Museum and Japanese Gardens. Additional/replacement assets will be added on an annual basis and included in the COUNTY's fixed asset management database. At the end of the any use period, the CONSULTANT shall return said assets to COUNTY in the same condition as received, normal wear excepted.

5. Professional Expertise

To obtain maximum outcomes, the CONSULTANT shall supplement trained maintenance personnel with professional consultants and such other professional specialists as are necessary. These personnel shall be hired at the expense of the CONSULTANT.

The CONSULTANT shall integrate its trimming, pruning and training maintenance program based upon authentic Japanese gardens management principles and the COUNTY's maintenance manual which will be provided to the CONSULTANT.

6. Work Hours / Safety

6.1 CONSULTANT shall work with the COUNTY Representative to develop a schedule that ensures that the priorities of the COUNTY are addressed in a timely fashion.

6.2 One (1) week prior to performing any maintenance work, CONSULTANT shall provide to COUNTY its monthly maintenance project schedules. In addition, CONSULTANT shall furnish to COUNTY an annual master scheduling plan setting forth the proposed work/project schedule for the upcoming year.

6.3 In the event of a natural disaster, the COUNTY may issue written authorization to the CONSULTANT to allow overtime at the COUNTY's expense to repair the Gardens.

6.4 CONSULTANT shall be responsible for instructing its employees in appropriate safety measures and shall not permit them to place tools, materials and other equipment in traffic lanes, paths, or other locations in such a manner as to create safety hazards.

6.5 CONSULTANT's personnel shall be required to interrupt performance of their work, as necessary, to allow passage of Gardens' patrons.

6.6 CONSULTANT shall conduct monthly safety meetings for all maintenance staff working at the facility.

6.7 All maintenance work shall be done in conjunction with Gardens patron's activities and shall not interrupt Gardens patron's activities unless partial or complete interruption of Gardens patron's activities is planned in advance and approved by COUNTY.

7. Evaluation of Operations

7.1 The COUNTY shall, on a monthly basis or more frequently if necessary, inspect some or all of the Gardens for purposes of ensuring CONSULTANT's compliance with the Scope of Work/Services. In conducting such inspection and evaluation, the COUNTY Representative shall complete applicable portions of the Gardens Maintenance Evaluation Form (attached hereto as **Attachment B of this Appendix 1**) and shall promptly thereafter provide CONSULTANT a copy of the completed form or applicable portion. The COUNTY shall act reasonably and in good faith in making the determination of whether the CONSULTANT has met the standards of the applicable areas being evaluated as identified in the Scope of Work/Services.

The Gardens operations and maintenance components shall be rated as "Satisfactory or Better", "Needs Improvement", or "Unacceptable". An overall rating using the same scale shall also be determined. The COUNTY Representative's rating of an item as "Unacceptable" or "Needs Improvement" shall, upon CONSULTANT's receipt of the Gardens Maintenance Evaluation Form, constitute a Notice of Deficiency with respect to the deficient item(s).

7.2 Within one (1) week after receipt of the Notice of Deficiency, the onsite supervisor and the COUNTY Representative if necessary, shall meet to review the deficiency item(s), review the corrective actions the CONSULTANT intends to take to correct the deficiency item(s) and review the time schedule for completion of corrective action. The proposed corrective action and time schedule shall be reasonably approved by the COUNTY. When a deficient item has been satisfactorily corrected, the CONSULTANT shall notify the COUNTY.

If CONSULTANT obtains an overall rating of "Unacceptable" for a period of two (2) consecutive months, or fails to take action to timely correct any deficiency item(s), a Vendor Performance Report and supporting documentation shall be submitted to the Palm Beach County Purchasing Department to notify them of CONSULTANT's non-performance. Upon receipt of a Vendor Performance Report, the Purchasing Department shall formally contact the CONSULTANT in an effort to resolve the performance issues. When CONSULTANT has addressed the deficiency (ies) to COUNTY's satisfaction, and then is non-compliant for any four (4) months within any single operating year, or any two (2) consecutive months, the COUNTY may terminate the Contract by giving five (5) business days' written notice to CONSULTANT.

7.3 The following items shall be considered exclusions for the purpose of determining whether there have been two (2) consecutive months with overall ratings of “Unacceptable” and for the purpose of determining whether an outstanding deficiency item has been timely corrected:

Any outstanding deficiency item that CONSULTANT is diligently and timely correcting in accordance with the time schedule jointly agreed to by the COUNTY and the CONSULTANT.

Any deficiency item in which the correction is considered a Capital Improvement, but only if and to the extent CONSULTANT, in light of its expertise and experience as a manager of first class gardens, could not have taken reasonable measures to prevent or mitigate the deficiency item from occurring.

Any deficiency item that CONSULTANT is unable to correct because of the occurrence of a Force Majeure Event, but only to the extent the CONSULTANT, in light of its expertise and experience as a manager of first class gardens, could not have taken reasonable measures to prevent or mitigate the Force Majeure Event.

Any deficiency item that CONSULTANT is unable to correct due to COUNTY’s failure to provide sufficient funds to effect such correction, but only if and to the extent CONSULTANT, in light of its expertise and experience as a manager of first class gardens, could not have taken reasonable measures to prevent or mitigate the deficiency item from occurring.

7.4 From time to time, or on an as needed basis, the COUNTY may bring in an outside consultant or other COUNTY department to conduct an independent evaluation of the facility, or to assist the COUNTY in conducting its monthly evaluation process.

8. Construction, Remodeling / Special Projects / Materials

8.1 Any change in the physical characteristics of any area of the Gardens such as addition or removal of water, trees or native vegetation or the modification of any portion of the garden or its structures shall be approved in advance, in writing, by the COUNTY.

8.2 Projects identified by the CONSULTANT which will improve the quality of the Gardens or service and assist in effecting future cost savings will be evaluated by the COUNTY to determine if they are necessary, if funding exists for the work, and how the CONSULTANT should go about initiating such projects. Depending on the scope of work, COUNTY may utilize outside contractors, or reimburse CONSULTANT for subcontracted work, labor and any materials, which will be billed at CONSULTANT’s cost, plus proposed markup. Work may include the installation of landscape materials, rocks, pathway materials, bamboo fencing, bonsai, or other traditional and authentic features found in Japanese gardens.

8.3 Should the COUNTY elect to reimburse CONSULTANT for construction, remodeling and special project work, the CONSULTANT shall pursuant to Section 2 of the Contract submit a Change Authorization request, scope of work and estimated costs in advance to the COUNTY. If approved the COUNTY will issue a Change Authorization in accordance with Section 2 of the Contract.

9. Additional Work

From time to time the COUNTY may evaluate the operations of the CONSULTANT and the COUNTY to determine if it would be in the COUNTY's best interest to expand the CONSULTANT's scope of work to include other components of Japanese gardens maintenance such as path raking, mulching, bed and grass mowing and manicuring, rock raking, or other authentic Japanese maintenance practices and special event maintenance and janitorial support. CONSULTANT shall propose an hourly rate for additional general and specialized labor and supervision to fulfill these additional responsibilities. If additional work is requested by the County, a Change Authorization will be issued pursuant to Section 2 of the Contract.

10. Permits/Licenses

CONSULTANT shall obtain, maintain current and fully comply with any and all permits, licenses and other governmental authorizations, however designated, as may be required at any time by any federal, state or local governmental entity or any court of law having jurisdiction over CONSULTANT or CONSULTANT's operations and activities for any activity of CONSULTANT's conducted at Morikami Museum and Japanese Gardens at CONSULTANT'S cost. The CONSULTANT shall provide to COUNTY, upon written request, certified copies of any and all permits and licenses.

11. Safety Regulations

CONSULTANT shall conduct its operations and activities in a safe manner and shall comply with all safety regulations of the COUNTY and safety standards imposed by applicable federal, state and local laws and regulations. The CONSULTANT shall require the observance thereof by all employees, contractors, business invitees and all other persons transacting business with or for CONSULTANT resulting from, or in any way related to, the conduct of CONSULTANT's business at Morikami Museum and Japanese Gardens.

12. Environmental and Natural Resource Laws, Regulations and Permits

12.1 It shall be the responsibility of the CONSULTANT to be knowledgeable of any and all federal, state, regional and local government laws, ordinances, regulations, orders and rules, without limitation, which govern or which in any way, apply to the direct or indirect results and impacts to the environment and natural resources due to, or in any way, resulting from the conduct by CONSULTANT of its operations to Morikami Museum and Japanese Gardens.

12.2 CONSULTANT shall acknowledge and understand that its operations performed may involve the generation, processing, handling, storing, transporting and disposal of certain hazardous and/or toxic materials which are, or may be, subject to regulation by federal, state or local law, ordinance, regulations, rules, orders, or other governmental rules and requirements.

12.3 If CONSULTANT is deemed to be a generator of hazardous waste, as defined by federal, state or local law, the CONSULTANT shall obtain an EPA identification number and the appropriate generator permit and shall comply with all requirements imposed upon a generator of hazardous waste, including but not limited to, ensuring that the appropriate transportation and disposal of such materials are conducted in full compliance of the law.

12.4 Provisions shall be made by CONSULTANT to have an accurate inventory list (including quantities) of all such hazardous, toxic and other contaminated or polluted materials, whether stored, disposed of or recycled, available at all times for inspection by COUNTY, including fire department officials, for implementation of proper storage, handling and disposal procedures.

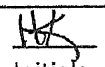
12.5 CONSULTANT shall notify the Palm Beach County Solid Waste Authority, or such other agencies as COUNTY may from time to time designate, of all hazardous waste activities for the inclusion as a County generator of such waste.

12.6 In case of any spill, leak or other emergency situation involving hazardous, toxic, flammable and/or other pollutant/contaminated materials, CONSULTANT shall contact the COUNTY immediately.

12.7 CONSULTANT shall be strictly liable for, and shall assume all responsibility for, all citations, fines, environmental controls and monitoring, clean-up and disposal, restoration and corrective measures resulting from or in any way connected with CONSULTANT, CONSULTANT's employees, CONSULTANT'S contractors or subcontractors or CONSULTANT's designee's improper use, handling, storage, and/or disposal of all pollutants or contaminated materials, as defined by law, regardless of whether or not a default notice has been issued and notwithstanding any other obligations imposed upon CONSULTANT. CONSULTANT shall be responsible for the proper storage and security of all pollutants and contaminated materials located at Morikami Museum and Japanese Gardens.

12.8 CONSULTANT, its employees, agents, contractor's and all persons working for or on behalf of the CONSULTANT, shall be fully and properly trained in the handling of all such hazardous and toxic waste materials and other pollutants and contaminants, and such training shall comply with any and all federal, state and local laws, ordinances, regulations, rulings, orders and standards which are now or are hereafter promulgated.

13. Service Requests


Initials

From time to time, the COUNTY may submit service requests to the CONSULTANT. Compliance with these service requests that fall within CONSULTANT's scope of services shall be within thirty (30) days.

APPENDIX 1
ATTACHMENT A

MINIMUM MAINTENANCE STANDARDS

Note: These specifications are meant to indicate minimum practices necessary for proper trimming, pruning, and training of the Garden's shrubs and trees in conditions specified herein, but nothing in these specifications shall be interpreted to limit the responsibility of the CONSULTANT from carrying out additional measures required to meet the intent and quality specified.

1. WORK AREA

CONSULTANT's area of work shall be the entire Morikami Museum and Japanese Gardens property including the area surrounded by chain link fence denoting the visitor's paid experience, the parking lot, the plantings between the parking lot and the museum entrance, and museum entrance sign plantings at Jog Rd.

More specifically the areas include: the front yard, museum terrace/patio, Morikami Bridge/Wisdom Ring, 1st and 2nd Shinden Island, Kodaimon Gate, Bamboo Grove, Ficus Mountain, Guava Tunnel, Paradise Garden, Shi Shi Odoshi, Early Rock Garden, Late Rock Garden, Flat Garden, Modern Garden, Contemplation Pavilion, Nelson Garden, South Gate/Morikami Tomb/Earth Bridge, Yamato Kan Island, Koi Feeding Waterfall, Hosokawa Memorial Garden, Yamato Kan Lagoon, Rocky Point, Bench Cove, Morikami Falls Bridge, Morikami Falls.

2. TRIMMING AND PRUNING

All trees and shrubs between 0 feet and 15 feet will be trimmed and pruned to control seasonal growth, to maintain the materials' aesthetic and artistic form, and for protection from wind or insect damage. CONSULTANT shall continually follow authentic Japanese trimming and pruning principles. Trees shall be pruned 4 times per year at minimum, shrubs shall be pruned 6 times per year at a minimum.

- A. **Training** – All trees and shrubs shall be continuously trained with traditional Japanese materials to maintain the materials aesthetic and artistic form and to ensure the Garden Designer's and Garden Curator's current and future vision for the Gardens is maintained.
- B. **Tools** – CONSULTANT shall limit their use of power tools so that authentic Japanese maintenance practices are implemented and so that the serenity of the garden is not interrupted unnecessarily. CONSULTANT will use good quality and regularly sharpened tools that are proper for the job. By-pass type loppers and hand pruners for small branches. Hand saws must be used for small branches larger than 1". Chain saws may be used for branches larger than 2".

- C. **Power tools and Vehicles** – Should the CONSULTANT elect to use the COUNTY power tools and vehicles identified in **Attachment C of this Appendix 1**, the COUNTY will provide fuel for the tools and vehicles. CONSULTANT shall be responsible for replacing any CONSULTANT damaged COUNTY provided power tools or vehicles.
- D. **Clean Up** - CONSULTANT shall remove the vegetative debris created by their operations in planting beds, on paths, and in lawns prior to shift completion and may coordinate the use of COUNTY off road vehicles for hauling debris to COUNTY approved organic debris pile. CONSULTANT shall take extra care in ensuring that beds are not contaminated with pathway rock and sand and/or clipping materials.
- E. **Damages** – Should CONSULTANT cause damage to structures and landscaping, they shall report such damage to the COUNTY Representative and shall be responsible for repairing such damage or payment for the repairs at the sole discretion of the COUNTY Representative.
- F. **Storage** – COUNTY will designate a dry storage area in the maintenance building and an area in the compound for CONSULTANT's tools and equipment used at Morikami Museum and Japanese Gardens. CONSULTANT shall keep such areas in a neat and safe condition. These areas shall not be secured from other maintenance staff and all materials and equipment will be stored at CONSULTANT's risk.
- G. **Accidents** – CONSULTANT shall notify the COUNTY Representative immediately if any accident or injury occurs to their staff.
- H. **Incidents** - CONSULTANT shall notify the COUNTY Representative immediately if any incident, accident or injury occurs to the public or COUNTY staff and shall provide a written report of such accidents and incidents for COUNTY's records.
- I. **Working relationships** – CONSULTANT's staff shall maintain a positive and constructive working relationship with the COUNTY Representative and COUNTY staff.

APPENDIX 1
ATTACHMENT B

OPERATIONS AND MAINTENANCE EVALUATION FORMS

Page 1 of 2

GARDEN AUDIT

GARDEN AUDIT: _____ DATE: _____

CONSULTANT REP: _____ COUNTY REP: _____

<u>AREA</u>	<u>UNSATISFACTOR</u> <u>Y</u>	<u>NEEDS</u> <u>IMPROVEMENT</u>	<u>SATISFACTORY</u>
Shrub Pruning	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Shrub Training	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tree Pruning	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tree Training	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Site Cleanup	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Staff Appearance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Equipment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**APPENDIX 1
ATTACHMENT B**

**OPERATIONS AND MAINTENANCE EVALUATION FORMS TO SCOPE OF
WORK/SERVICES**

Page 2 of 2

DEFICIENT ITEMS

<u>ITEM</u>	<u>REQUIRED COMPLETION DATE</u>
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	
15.	

**APPENDIX 1
ATTACHMENT C**

COUNTY ASSETS INVENTORY

(consisting of 1 page)

2 Hedge Trimmers

1 Chain Saw

1 Kawasaki Mule

1 Golf Cart

6ft, 8ft, 10ft, 12ft, Tripod Ladder

EXHIBIT A

SCOPE OF WORK & FEE

I. Scope of Work

The Scope of Work/Services to be performed under this Contract consists of all maintenance tasks necessary to ensure the authentic Japanese style trimming, pruning and training of shrubs and trees at the Morikami Museum and Japanese Gardens (Gardens), and to provide consulting services regarding the design and management of the Gardens.

- A. Maintenance Services. Consultant will perform maintenance services in an amount and with the level of skill and expertise as described in **Appendix 1** to the Contract.
- B. Construction, Remodeling/ Special Projects/ Materials. Consultant will design and deliver special projects as described in **Appendix 1 paragraph 8** upon approval and issuance of a Change Authorization (the change authorization procedure is described in Section 2 of the Contract.)
- C. Additional Work. Consultant will design and deliver additional work as described in **Appendix 1 paragraph 9** upon approval and issuance of a Change Authorization (the change authorization procedure is described in Section 2 of the Contract.)

II. Fees

Maintenance Services Pricing	Price
Price for Japanese garden consulting, trimming, pruning and training per the scope of work 1st Year	\$220,000.00
Price for Japanese garden consulting, trimming, pruning and training per the scope of work 2nd Year	\$224,888.00
Price for Japanese garden consulting, trimming, pruning and training per the scope of work 3rd Year	\$228,888.00
Price for Japanese garden consulting, trimming, pruning and training per the scope of work for renewal option 1	\$233,466.00
Price for Japanese garden consulting, trimming, pruning and training per the scope	\$238,135.00

of work for renewal option 2	
-------------------------------------	--

Appendix 1 Paragraphs 8 and 9 Special Projects and Additional Work Pricing	Price
Hourly rate for additional laborers	\$35.00
Hourly rate for additional certified spray technician	\$40.00
Hourly rate for additional crew supervisor	\$45.00
	Percent
Markup for additional landscape materials	15%
Markup for subcontracted traditional landscape or gardening special project work	10%
Markup for self-performed traditional landscape or gardening special project work	15%
Markup for specialty Japanese artisan special project work	40%

EXHIBIT B

SBE SCHEDULES 1 & 2

SCHEDULE 1

LIST OF PROPOSED SBE-M/WBE PARTICIPATION

PROJECT NAME: MORIKAMI MUSEUM AND JAPANESE GARDENS MAINTENANCE PROJECT NO: 17211

NAME OF PRIME CONSULTANT: Kurisu, LLC

THIS DOCUMENT IS TO BE COMPLETED BY THE PRIME CONSULTANT AND SUBMITTED WITH PROPOSAL. LIST THE NAME AND ESTIMATED PERCENTAGE OF WORK TO BE COMPLETED BY ALL SBE -M/WBE SUBCONSULTANTS ON THIS PROJECT. IF THE PRIME IS AN SBE-M/WBE, ALSO LIST THE NAME AND ESTIMATED PERCENTAGE OF WORK TO BE COMPLETED BY THE PRIME ON THIS PROJECT. THE PRIME AFFIRMS THAT IT WILL MONITOR THE SBES LISTED TO ENSURE THE SBES PERFORM THE WORK WITH ITS OWN FORCES.

Name	(Check one or both Categories)		ESTIMATED PERCENTAGE OF WORK				
	M/WBE Minority Business	SBE Small Business	Black	Hispanic	Woman	Caucasian	Other (Specify)
1. Kurisu, LLC	<input type="checkbox"/>	<input checked="" type="checkbox"/>					95% SBE
2. Studio Sprout, Inc.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			5%		
3.	<input type="checkbox"/>	<input type="checkbox"/>					
4.	<input type="checkbox"/>	<input type="checkbox"/>					
5.	<input type="checkbox"/>	<input type="checkbox"/>					

(Use additional sheets if necessary)

Total SBE Participation Percentage of Work: 100%

Total M/WBE Participation Percentage of Work: 5%

I hereby certify that the above information accurate to the best of my knowledge:

Signature

Title

PRINCIPAL STUDIO SPROUT

Notes:

1. The percentages listed on this form for a SBE-M/WBE Prime or subconsultant must be supported by Schedule 2 in order to be counted toward goal attainment.
2. SBE firms must be certified by Palm Beach County. M/WBE firms must be certified by Palm Beach County or the State of Florida. If firms are certified as both an SBE and M/WBE, indicate the percentage under the appropriate category.

SCHEDULE # 2

LETTER OF INTENT TO PERFORM AS AN SBE OR M/WBE SUBCONSULTANT

PROJECT NO. 172011 PROJECT NAME: MORIKAMI MUSEUM AND JAPANESE GARDENS MAINTENANCE

TO: Kurisu International
(Name of Prime Consultant)

The undersigned is certified by Palm Beach County as a(n) - (check one or more, as applicable):

Small Business Enterprise x

Black _____ Hispanic _____ Women x _____ Caucasian _____ Other (Please Specify) _____

Date of Palm Beach County Certification: November 21, 2016 – November 20, 2019

The undersigned is certified by the State of Florida:

Minority Business Enterprise _____

The undersigned is prepared to perform the following described work in connection with the above project (Specify in detail particular work items or parts thereof to be performed):

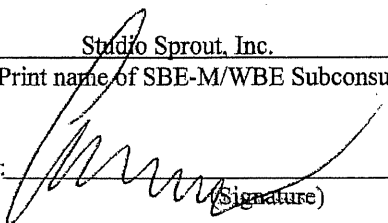
Landscape Architecture

at the following price \$ _____ 5% _____
(Subconsultant's fee)

and will enter into a formal agreement for work with you conditioned upon your execution of a contract with Palm Beach County.

If undersigned intends to sub-subcontract any portion of this subcontract to a non-certified SBE subconsultant, the percentage of any such subcontract must be stated: NA

The undersigned subconsultant understands that the provision of this form to prime consultant does not prevent subconsultant from providing services to other consultants.

Studio Sprout, Inc.
(Print name of SBE-M/WBE Subconsultant)
By: 
(Signature)

Constance Roy-Fisher, Principal
(Print name/title of person executing on behalf of SBE-M/WBE Subconsultant)

Date: August 10, 2017

EXHIBIT C

INSURANCE CERTIFICATES



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
8/1/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


PRODUCER Nielsen Insurance Agency 12587 SW 68th Ave Tigard, OR 97223	CONTACT NAME: Jennifer Fischer	
	PHONE (A/C No. Ext): (503) 684-6598	FAX (A/C No.): (503) 244-6881
	E-MAIL ADDRESS: jennifer@niagency.com	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Truck Insurance Exchange	
	INSURER B: Hiscox (Lloyds)	
INSURED Kurisu LLC PO Box 12510 Portland, OR 97212	NAIC# 21709	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	Y	Y	60581-63-39	2/11/2017	2/11/2018	EACH OCCURRENCE \$ 2,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
							MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 2,000,000
							GENERAL AGGREGATE \$ 4,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$ 4,000,000
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC						\$
	OTHER:						\$
A	AUTOMOBILE LIABILITY			60581-63-39	2/11/2017	2/11/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000
	<input checked="" type="checkbox"/> ANYAUTO						BODILY INJURY (Per person) \$
	<input checked="" type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS						\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR			60581-63-43	2/11/2017	2/11/2018	EACH OCCURRENCE \$ 4,000,000
	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$ 4,000,000
	<input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N	N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$
B	Professional Liability			ANE1382861.16	10/01/16	10/01/17	\$ 1,000,000 Each Claim
	incl. Contractors Pollution Liability						\$ 1,000,000 Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its officers, employees, and agents are named as additional insured as respects General Liability. Coverage is primary & non-contributory. Waiver of Subrogation applies. 30 day notice of cancellation, except 10 days for non payment of premium.

CERTIFICATE HOLDER	CANCELLATION
Palm Beach County c/o Insurance Tracking Services, Inc. PO Box 20270 Long Beach, CA 90801	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

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CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
8/1/2017

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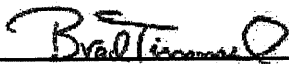
PRODUCER Nielsen Insurance Agency 12587 SW 68th Ave Tigard, OR 97223	CONTACT NAME: Jennifer Fischer	
	PHONE (A/C No. Ext): (503) 684-6598	FAX (A/C No.): (503) 244-6881
	E-MAIL ADDRESS: jennifer@niagency.com	
	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Truck Insurance Exchange	
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INSURED Kurisu LLC PO Box 12510 Portland, OR 97212	NAIC# 21709	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
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							PERSONAL & ADV INJURY \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 4,000,000
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$ 4,000,000
	OTHER:						\$
A	AUTOMOBILE LIABILITY			60581-63-39	2/11/2017	2/11/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000
	<input checked="" type="checkbox"/> ANY AUTO	<input type="checkbox"/> SCHEDULED AUTOS	BODILY INJURY (Per person) \$				
	<input checked="" type="checkbox"/> ALL OWNED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS	BODILY INJURY (Per accident) \$				
	<input checked="" type="checkbox"/> HIRED AUTOS		PROPERTY DAMAGE (Per accident) \$				
A	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input checked="" type="checkbox"/> OCCUR	60581-63-43	2/11/2017	2/11/2018	EACH OCCURRENCE \$ 4,000,000	
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE				AGGREGATE \$ 4,000,000	
	DED <input checked="" type="checkbox"/> RETENTION \$ 10,000					\$	
						\$	
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N <input type="checkbox"/>	N/A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
B	Professional Liability			ANE1382861.16	10/01/16	10/01/17	\$1,000,000 Each Claim
	incl. Contractors Pollution Liability						\$1,000,000 Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its officers, employees, and agents are named as additional insured as respects General Liability. Coverage is primary & non-contributory. Waiver of Subrogation applies. 30 day notice of cancellation, except 10 days for non payment of premium.

CERTIFICATE HOLDER	CANCELLATION
Palm Beach County Board of County Commissioners c/o Capital Improvements Division 2633 Vista Parkway West Palm Beach, FL 33411-5604	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES
OR CONTRACTORS**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY

SCHEDULE*

Name Of Person Or Organization: PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

The following is added to Paragraph C. **Who Is An Insured** in the Businessowners Liability Coverage Form:

- 4. Any person or organization shown in the Schedule is also an insured, but only with respect to liability arising out of your ongoing operations performed for that insured.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US

E3306
1st Edition

02/11/17
Effective Date

60581-63-39
Policy Number

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COMMON POLICY CONDITIONS - BP 00 09

SCHEDULE

Name of Person or Organization:
PALM BEACH COUNTY C.O INS TRACKING SERVICES INC

(If no entry appears above, information required to complete this Endorsement must be shown in the Declarations as applicable to this endorsement.)

The provisions of the Businessowners Common Policy Conditions are modified by this endorsement as follows:

Condition K. Transfer Of Rights Of Recovery Against Others To Us in the Businessowners Common Policy Conditions is amended by the addition of the following:

- 3. We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard." This waiver applies only to the person or organization shown in the Schedule above.

This endorsement is part of your policy. It supersedes and controls anything to the contrary. It is otherwise subject to all the terms of the policy.

Workers' Compensation
Certificate of Insurance

Certificate holder:

PALM BEACH COUNTY
C/O CAPITAL IMPROVEMENTS DIVISION
2633 VISTA PARKWAY
WEST PALM BEACH, FL 33411

The policy of insurance listed below has been issued to the insured named below for the policy period indicated. The insurance afforded by this policy is subject to all the terms, exclusions and conditions of such policy; this policy is subject to change or cancellation at any time.

Insured Kurusu International Inc PO Box 12510 Portland, Or 97212-0510		Producer/contact USIS c/o SAIF Corporation SAIF Corp - Northern Jarren Swazo 971.242.5782 jarswa@saif.com	
Insurer	Zurich American Insurance Company	Limits of liability	
Issued	08/14/2017	Bodily Injury by Accident	\$100,000 each accident
Policy	9663288	Bodily Injury by Disease	\$500,000 each employee
Period	10/01/2016 to 10/01/2017	Body Injury by Disease	\$100,000 policy limit
<input checked="" type="checkbox"/> Any Proprietor/Partner/Executive Officer/Member Excluded		<input type="checkbox"/> Subrogation waived	

Description of operations/locations/special items
Project #17211

Kurusu LLC is endorsed as Named Insured. Member Hoichi Kurisu is exempt.

Important

This certificate is issued as a matter of information only and confers no rights to the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies above. This certificate does not constitute a contract between the issuing insurer, authorized representative or producer and the certificate holder.

Cancellation

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

Authorized representative



Drew Moreton
Vice President, USIS

400 High Street SE
Salem, OR 97312
P: 800.285.8525
F: 503.584.9812

EXHIBIT D

CONFLICT OF INTEREST DISCLOSURE FORM

CONFLICT OF INTEREST DISCLOSURE FORM

CONSULTANT represents that it presently has no interest, either direct or indirect, which would or could conflict in any manner with the performance of services for the County, except as follows:

(Attach additional sheets as needed.)

CONSULTANT further represents that no person having any interest shall be employed for said performance. By signing below, CONSULTANT certifies that the information contained herein is true and correct and constitutes all current potential conflicts of interest which may influence or appear to influence CONSULTANT’S judgment or quality of services being provided to the County.

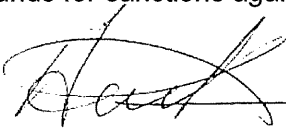
CONSULTANT shall promptly notify the COUNTY in writing by certified mail of all potential conflicts of interest that may arise in the future through any prospective business association, interest or other circumstance which may influence or appear to influence CONSULTANT ’S judgment or quality of services being provided to the County. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that CONSULTANT may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute an unacceptable conflict of interest if entered into by the CONSULTANT.

If, in the sole opinion of the COUNTY, the prospective business association, interest or circumstance of CONSULTANT would constitute an unacceptable conflict of interest to the COUNTY, the COUNTY shall so state in the notification and the CONSULTANT shall not enter into said association, interest or circumstance.

THIS DISCLOSURE is submitted by Hoichi Kurisu,
(Name of Individual)

Owner/President, of Kurusu, LLC
(Title/Position) (Firm Name of CONSULTANT)

who hereby certifies that the information stated above is true and correct. Further, it is hereby acknowledged that any misrepresentation by the Consultant on this Disclosure is considered an unethical business practice and is grounds for sanctions against future County business with the Consultant.



(Signature) (Date)

DISCLOSURE OF OWNERSHIP INTERESTS

TO: **PALM BEACH COUNTY CHIEF OFFICER,
OR HIS OR HER OFFICIALLY DESIGNATED REPRESENTATIVE**

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

BEFORE ME, the undersigned authority, this day personally appeared Hoichi Kurisu, herein after referred to as "Affiant," who being by me first duly sworn, under oath, deposes and states as follows:

1. Affiant appears herein as:

☐ an individual *or*

☒ the President of Kurisu, LLC.

[position—e.g., sole proprietor, president, partner, etc.] [name & type of entity—e.g., ABC Corp., XYZ Ltd. Partnership, etc.]. The Affiant or the entity the Affiant represents herein seeks to do business with Palm Beach County through its Board of County Commissioners.

2. Affiant's address is: Mailing Address: PO Box 12510, Portland, OR 97212

Florida Office: 555 SE 6th Avenue, 12B, Delray Beach, FL 33483

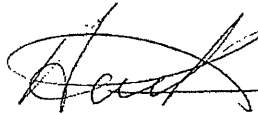
3. Attached hereto as Exhibit "A" is a complete listing of the names and addresses of every person or entity having a five percent (5%) or greater interest in the Affiant's corporation, partnership, or other principal. Disclosure does not apply to nonprofit corporations, government agencies, or to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

4. Affiant acknowledges that this Affidavit is given to comply with Palm Beach County policy, and will be relied upon by Palm Beach County and the Board of County Commissioners. Affiant further acknowledges that he or she is authorized to execute this document on behalf of the entity identified in paragraph one, if any.

5. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.


6. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct and complete.

FURTHER AFFIANT SAYETH NAUGHT.



Hoichi Kurisu, Affiant
(Print Affiant Name)

The foregoing instrument was acknowledged before me this 15th day of May, 2017, by Hoichi Kurisu, who is personally known to me who has produced a passport as identification and who did take an oath.



Notary Public

Susan Dearborn

(Print Notary Name)

State of Oregon

My Commission Expires: May 16, 2017

EXHIBIT "A"

DISCLOSURE OF OWNERSHIP INTERESTS IN AFFLIANT

Affiant must identify all entities and individuals owning five percent (5%) or more ownership interest in Affiant's corporation, partnership or other principal, if any. Affiant must identify individual owners. For example, if Affiant's principal is wholly or partially owned by another entity, such as a corporation, Affiant must identify the other entity, its address, and the individual owners of the other entity. Disclosure does not apply to any nonprofit corporation, government agency, or to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

Name

Address

Hoichi Kurisu Trust

P.O. Box 23623 Portland OR 97281

Judy Kurisu Trust

P.O Box 23623 Portland OR 97281