



**TO:** SOUTHERN NEVADA DISTRICT BOARD OF HEALTH      **DATE:** September 26, 2019

**RE:** *Construction Agreement between Southern Nevada Health District and DM Stanek Corporation.*

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**PETITION #11-20**

**That the Southern Nevada District Board of Health** *approve the Construction Agreement C2000032 between the Southern Nevada Health District and DM Stanek Corporation for the construction of three new exam rooms at the Health Districts main facility.*

**PETITIONERS:**

**Fermin Leguen, MD, MPH, Director of Clinical Services** *FL*  
**Joseph P. Iser, MD, DrPH, MSc, Chief Health Officer**

**DISCUSSION:**

The Southern Nevada Health District (SNHD) currently delivers Family Planning, HIV, Sexually Transmitted Diseases, Primary Care, and Laboratory services in addition to other clinical services. The SNHD is interested in enhancing the limited capacity these clinical areas currently have, by remodeling a segment of the area occupied by the Family Planning and Primary care clinics, as well as the Clinical Laboratory area in the Sexual Health clinic, it will allow for 3 additional examination rooms, and easier access of patients to the Clinical Lab.

The requirement was competitively bid with 4 bidding contractors. DM Stanek was the low bidder and selected for award

**FUNDING:**

The cost of the remodel is \$95,208. Funding will be from the general fund.

# AIA<sup>®</sup> Document A105<sup>™</sup> – 2017

## *Standard Short Form of Agreement Between Owner and Contractor*

AGREEMENT made as of the 26th day of September in the year 2019

BETWEEN the Owner:

Southern Nevada Health District  
280 S. Decatur Blvd.  
Las Vegas, NV 89107  
Owner Representative: Sean Beckham

and the Contractor:

DM Stanek Corporation  
6000 S. Eastern Avenue, Building D, Suite 11  
Las Vegas, NV 89119

for the following Project:

Decatur Exam Rooms  
280 S. Decatur Blvd.  
Las Vegas, NV 89107

The Architect:

IN2IT Architecture  
5135 S. Durango Drive, Ste. 103  
Las Vegas, NV 89113

The Owner and Contractor (individually referred to as "Party," and collectively as "Parties") agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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User Notes: SNHD C2000032

(1228240717)

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 3 CONTRACT SUM
- 4 PAYMENTS
- 5 INSURANCE
- 6 GENERAL PROVISIONS
- 7 OWNER
- 8 CONTRACTOR
- 9 ARCHITECT
- 10 CHANGES IN THE WORK
- 11 TIME
- 12 PAYMENTS AND COMPLETION
- 13 PROTECTION OF PERSONS AND PROPERTY
- 14 CORRECTION OF WORK
- 15 MISCELLANEOUS PROVISIONS
- 16 TERMINATION OF THE CONTRACT
- 17 HIPAA AND HITECH
- 18 OTHER TERMS AND CONDITIONS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contractor shall complete the Work described in the Contract Documents for the Project. The Contract Documents consist of

- .1 this Agreement signed by the Owner and Contractor;
- .2 the drawings and specifications prepared by the Architect, enumerated as follows:

Drawings:		
<b>Number</b>	<b>Title</b>	<b>Date</b>
19RFP905, Set	Construction Plans	6/18/2019
Specifications:		
<b>Section</b>	<b>Title</b>	<b>Pages</b>
087100	Door Hardware	1-16
- .3 Owner's Request for Proposal ("RFP") 19RFP905, dated June 28, 2019
- .4 Contractor's Response dated July 24, 2019, to Owner's RFP 19RFP905

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- .5 addenda prepared by the Architect as follows:
- | Number   | Date                                    | Pages |
|--|---|-------|
| Questions and Responses relating to RFP 19RFP905 | Published from 7/3/19 through 7/17/2019 | 1-2   |
- .6 written orders for changes in the Work, pursuant to Article 10, issued after execution of this Agreement; and
- .7 Exhibit A: Confidentiality Agreement Between Southern Nevada Health District and DM Stanek Corporation  
Exhibit B: Confidentiality Agreement for Contract Workers in Clinical Areas
- .8 Other documents, listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Agreement, and are as fully a part of the Agreement as if attached to this Agreement or repeated herein. The Agreement represents the entire and integrated agreement between Parties and supersedes prior negotiations, representations or agreements, either written or oral. A Modification is (1) a written amendment to the Agreement signed by both Parties (2) a Change Order (3) a Construction Change Directive or (4) a written order for a Minor Change in the Work issued by Owner Representative.

If there should be a conflict between two or more of the Contract Documents, the conflict shall be resolved by complying with the provision most favorable to the Owner. The Owner shall make such determination in its sole discretion.

## ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The Contract Time is the number of calendar days available to the Contractor to substantially complete the Work.

### § 2.2 Date of Commencement:

*(Paragraphs deleted)*

The Date of Commencement of the Work shall be November 1, 2019

### § 2.3 Substantial Completion:

Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion, as defined in Section 12.5, of the entire Work:

Not later than seventy ( 70 ) calendar days from the date of commencement.

## ARTICLE 3 CONTRACT SUM

§ 3.1 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work. Subject to additions and deductions in accordance with Article 10, the Contract Sum is:

Ninety-Five Thousand, Two Hundred Eight Dollars (\$ 95,208.00 )

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

## ARTICLE 4 PAYMENTS

§ 4.1 Based on Contractor's Applications for Payment certified by the Owner Representative, the Owner shall pay the Contractor, in accordance with Article 12, as follows:

*(Paragraphs deleted)*

§ 4.1.1 Based upon Applications for Payment submitted to the Owner Representative by the Contractor and Certificate for Payment issued by the Owner Representative, the Owner shall make progress payment on account of the Contract

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Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 4.1.3 Provided that an Application for Payment is received by Owner Representative not later than the twenty-fifth day of a month, the Owner shall make payment of the certified amount to Contractor not later than the thirtieth day of the following month. If an Application for Payment is received after the application date fixed above, payment shall be made by Owner not later than thirty (30) days after Owner Representative receives the Application for Payment.

§ 4.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner Representative may require. This schedule, unless objected to by Owner Representative, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 4.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 4.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Five percent (5%). Pending final determination of cost to Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 12.6.
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Five percent (5 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Owner Representative has withheld or nullified a Certificate for Payment as provided in Section 12.3.

§ 4.1.7 The progress payment amount determined in accordance with Section 4.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner Representative shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
- .2 If after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of Contractor by issuance of Change Orders affecting final completion, and Owner Representative so confirms, Owner shall, upon application by Contractor and certification by Owner Representative, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Owner Representative prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 4.1.8 Reduction or limitation of retainage, if any, shall be as follows:

After Fifty percent (50%) of the work required by the contract has been performed, Owner may pay to Contractor any of the remaining payments without withholding any additional retainage; and any amount of

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any retainage that was withheld from previous payments, if, in the opinion of Owner, satisfactory progress is being made in the work.

§ 4.1.9 Except with the Owner's prior approval, Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

#### ARTICLE 5 INSURANCE

§ 5.1 The Contractor shall maintain the following types and limits of insurance until the expiration of the period for correction of Work as set forth in Section 14.2, subject to the terms and conditions set forth in this Section 5.1:

§ 5.1.1 Commercial General Liability insurance for the Project, written on an occurrence form, with policy limits of not less than One-Million Dollars (\$ 1,000,000 ) Bodily Injury each person, One-Million Dollars (\$1,000,000) Bodily Injury each occurrence, One-Million Dollars (\$ 1,000,000 ) Property Damage each occurrence, One-Million Dollars (\$1,000,000) Combined Single Limit, and Two-Million Dollars (\$ 2,000,000 ) general aggregate.

§ 5.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than Five-Hundred Thousand Dollars each person/One-Million Dollars each accident (\$500,000 each person/\$1,000,000 each accident ) for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 5.1.3 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 5.1.1 and 5.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 5.1.4 Workers' Compensation at statutory limits.

§ 5.1.5 Employers' Liability with policy limits not less than One-Million Dollars (\$ 1,000,000 ) each accident, One-Million Dollars (\$ 1,000,000 ) each employee, and One-Million Dollars (\$ 1,000,000 ) policy limit.

§ 5.1.6 The Contractor shall provide builder's risk insurance to cover the total value of the entire Project on a replacement cost basis.

#### § 5.1.7 Other Insurance Provided by the Contractor

*(Paragraph deleted)*

Coverage	Limits
Pollution Liability	\$2,000,000 each incident/\$2,000,000 aggregate

§ 5.2 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance and shall provide property insurance to cover the value of the Owner's property. The Contractor is entitled to receive an increase in the Contract Sum equal to the insurance proceeds related to a loss for damage to the Work covered by the Owner's property insurance.

§ 5.3 The Contractor shall obtain an endorsement to its Commercial General Liability insurance policy to provide coverage for the Contractor's obligations under Section 8.12. Contractor shall name Owner as Additional Insured.

§ 5.4 Prior to commencement of the Work, each party shall provide certificates of insurance showing their respective coverages.

§ 5.5 Unless specifically precluded by the Owner's property insurance policy, the Owner and Contractor waive all rights against (1) each other and any of their subcontractors, suppliers, agents, and employees, each of the other for damages caused by fire or other causes of loss to the extent those losses are covered by property insurance or other insurance applicable to the Work, except such rights as they have to the proceeds of such insurance.

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## ARTICLE 6 GENERAL PROVISIONS

### § 6.1 The Agreement

This Agreement represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Agreement may be amended or modified only by a written modification in accordance with Article 10.

### § 6.2 The Work

The term "Work" means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment, and services provided, or to be provided, by the Contractor to fulfill the Contractor's obligations.

### § 6.3 Intent

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

### § 6.4 Ownership and Use of Architect's Drawings, Specifications and Other Documents

Documents prepared by the Architect are instruments of the Architect's service for use solely with respect to this Project. Architect shall retain all common law, statutory, and other reserved rights, including the copyright. The Contractor, subcontractors, sub-subcontractors, and suppliers are authorized to use and reproduce the instruments of service solely and exclusively for execution of the Work. The instruments of service may be used by Owner for other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Architect.

*(Paragraphs deleted)*

## ARTICLE 7 OWNER

### § 7.1 Information and Services Required of the Owner

§ 7.1.1 If requested by the Contractor, the Owner shall furnish all necessary surveys and a legal description of the site.

§ 7.1.2 Except for permits and fees under Section 8.7.1 that are the responsibility of the Contractor, Owner shall obtain and pay for other necessary approvals, easements, assessments, and charges.

*(Paragraph deleted)*

### § 7.2 Owner's Right to Stop the Work

If Contractor fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct Contractor in writing to stop the Work until the correction is made.

### § 7.3 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, the Owner Representative may withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the cost of correction, provided the actions of the Owner and amounts charged to the Contractor were approved by the Owner Representative.

### § 7.4 Owner's Right to Perform Construction and to Award Separate Contracts

§ 7.4.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project.

§ 7.4.2 The Contractor shall coordinate and cooperate with the Owner's own forces and separate contractors employed by the Owner.

## ARTICLE 8 CONTRACTOR

### § 8.1 Review of Contract Documents and Field Conditions by Contractor

§ 8.1.1 Execution of the Agreement by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

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§ 8.1.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies, or omissions discovered to the Owner Representative.

#### § 8.2 Contractor's Construction Schedule

The Contractor, promptly after being awarded the Agreement, shall prepare and submit for the Owner's information a Contractor's construction schedule for the Work.

#### § 8.3 Supervision and Construction Procedures

§ 8.3.1 The Contractor shall supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work.

§ 8.3.2 The Contractor, as soon as practicable after award of the Agreement, shall furnish in writing to the Owner, through the Owner Representative, the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Owner has made a timely and reasonable objection.

#### § 8.4 Labor and Materials

§ 8.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

§ 8.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Agreement Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

#### § 8.5 Warranty

The Contractor warrants to the Owner that: (1) materials and equipment furnished under the Agreement will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents. Any material or equipment warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 12.5.

#### § 8.6 Taxes

The Contractor shall pay sales, consumer, use, and similar taxes that are legally required when the Agreement is executed.

#### § 8.7 Permits, Fees and Notices

§ 8.7.1 At Contractor's sole expense, Contractor shall procure and maintain for the duration of this Agreement any building permit(s) and other permits, and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work.

§ 8.7.2 Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Owner Representative in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules, and regulations.

#### § 8.8 Submittals

The Contractor shall promptly review, approve in writing, and submit to the Owner Representative Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents. Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents.



**§ 8.9 Use of Site**

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents, and the Owner.

**§ 8.10 Cutting and Patching**

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

**§ 8.11 Cleaning Up**

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work, its employees, or subcontractors. Upon completion of each day, Contractor shall be responsible for the organization, cleanup, or removal of all unused materials, tools, equipment, surplus materials, scraps and debris relating to the Work. At the completion of the Work, the Contractor shall remove its tools, construction equipment, machinery, and surplus material; and shall properly dispose of all waste materials.

**§ 8.12 Indemnification**

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Owner's consultants, and agents and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

**ARTICLE 9 ARCHITECT**

**§ 9.1** Upon request by the Owner Representative, the Architect will promptly review and approve or take appropriate action upon Contractor's submittals, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

**§ 9.2** Upon request by the Owner Representative, the Architect will visit the site to become generally familiar with the progress and quality of the Work.

**§ 9.3** The Architect will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

**§ 9.4** Upon written request of Owner Representative, Architect will promptly interpret and decide matters concerning performance under, and requirements of, the Contract Documents.

**§ 9.5** Architect will make interpretations and decisions consistent with the intent of, and reasonably inferable from the Contract Documents, and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

**§ 9.6** The Architect's duties, responsibilities, and limits of authority as described in the Contract Documents shall not be changed without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

*(Paragraphs deleted)*

**ARTICLE 10 CHANGES IN THE WORK**

**§ 10.1** The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions, and the Contract Sum and Contract Time shall be adjusted accordingly, in writing. If the Owner and Contractor cannot agree to a change in the Contract Sum, the Owner shall pay the Contractor its actual cost plus reasonable profit.

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§ 10.2 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

*(Paragraphs deleted)*

#### ARTICLE 11 TIME

§ 11.1 Time limits stated in the Contract Documents are of the essence of the Agreement.

§ 11.2 If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, or other causes beyond the Contractor's control, the Contract Time shall be subject to equitable adjustment.

§ 11.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the responsible party.

#### ARTICLE 12 PAYMENTS AND COMPLETION

##### § 12.1 Contract Sum

The Contract Sum stated in this Agreement, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

##### § 12.2 Applications for Payment

§ 12.2.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner Representative an itemized Application for Payment for Work completed in accordance with the values stated in this Agreement. Such Application shall be supported by data substantiating the Contractor's right to payment as the Owner may reasonably require, such as evidence of payments made to, and waivers of liens from, subcontractors and suppliers. Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 12.2.2 Based on the Owner's observations and evaluations of Contractor's Application for Payment, Owner Representative will advise Owner of any exceptions noted. Owner Representative has authority to reject Work that does not conform to the Contract Documents.

§ 12.2.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or other encumbrances adverse to the Owner's interests.

##### § 12.3 Certificates for Payment

The Owner Representative will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; (2) issue to the Owner a Certificate for Payment for such amount as the Owner Representative determines is properly due, and notify the Contractor and Owner in writing of the Owner Representative's reasons for withholding certification in part; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of Owner Representative's reason for withholding certification in whole. If certification or notification is not made within such seven day period, the Contractor may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time and the Contract Sum shall be equitably adjusted due to the delay.

##### § 12.4 Progress Payments

§ 12.4.1 After the Owner Representative has issued a Certificate for Payment, the Owner shall make payment in the manner provided in the Contract Documents.

§ 12.4.2 The Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from the Owner, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

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§ 12.4.3 Neither the Owner nor the Owner Representative shall have responsibility for payments to a subcontractor or supplier.

§ 12.4.4 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.

#### § 12.5 Substantial Completion

§ 12.5.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

§ 12.5.2 When the Work or designated portion thereof is substantially complete, Contractor will notify the Owner Representative and the Owner Representative will make an inspection to determine whether the Work is substantially complete. When the Owner Representative determines that the Work is substantially complete, Owner Representative shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, establish the responsibilities of the Owner and Contractor, and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

#### § 12.6 Final Completion and Final Payment

§ 12.6.1 Upon receipt of a final Application for Payment, the Owner Representative will inspect the Work. When the Owner Representative finds the Work acceptable and the Contract fully performed, Owner Representative will promptly issue a final Certificate for Payment.

§ 12.6.2 Final payment shall not become due until the Contractor submits to the Owner Representative releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests, or encumbrances arising out of the Contract.

§ 12.6.3 Acceptance of final payment by the Contractor, a subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

*(Paragraphs deleted)*

#### ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Agreement. The Contractor shall take reasonable precautions to prevent damage, injury, or loss to employees on the Work and other persons who may be affected thereby, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

#### ARTICLE 14 CORRECTION OF WORK

§ 14.1 The Contractor shall promptly correct Work rejected by the Owner Representative as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement, and additional testing.

§ 14.2 In addition to the Contractor's other obligations including warranties under the Agreement, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.

§ 14.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.3.

#### ARTICLE 15 MISCELLANEOUS PROVISIONS

##### § 15.1 Assignment of Agreement

Neither party to the Agreement shall assign the Agreement as a whole without written consent of the other.

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## § 15.2 Tests and Inspections

§ 15.2.1 At the appropriate times, the Contractor shall arrange and bear cost of tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 15.2.2 If the Owner Representative requires additional testing, the Contractor shall perform those tests.

§ 15.2.3 The Owner shall bear cost of tests, inspections, or approvals that do not become requirements until after the Agreement is executed. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

## § 15.3 Governing Law

The Agreement and the rights and obligations of the Parties shall be governed by, and construed according to the laws of the State of Nevada, notwithstanding conflict of laws principles, with Clark County, Nevada as the exclusive venue of any action or proceeding related to or arising out of this Agreement.

## ARTICLE 16 TERMINATION OF THE CONTRACT

### § 16.1 Termination by the Contractor

If the Work is stopped under Section 12.3 for a period of 30 days through no fault of the Contractor, Contractor may, upon seven additional days' written notice to the Owner, terminate the Agreement and recover from the Owner payment for Work executed including reasonable profit, and actual costs incurred by reason of such termination.

### § 16.2 Termination by the Owner for Cause

§ 16.2.1 The Owner may terminate the Agreement if the Contractor ceases work or fails to adhere to the Contract Time for a continuous and uncorrected period of thirty (30) days; fails to perform any aspect of the Work in accordance with the Contract Documents; repeatedly refuses or fails to supply enough properly skilled workers or proper materials; fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors; persistently disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; performs the Work in a manner that is continuously rejected, without Contractor correction; files bankruptcy or assigns assets for the benefit of creditors, becomes insolvent, or is unable or fails to pay its obligations as they mature; or is otherwise guilty of substantial breach of a provision of the Contract Documents.

§ 16.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may

- .1 take possession of the site and of all materials thereon owned by the Contractor, and
- .2 finish the Work by whatever reasonable method the Owner may deem expedient.

§ 16.2.3 When the Owner terminates the Agreement for one of the reasons stated in Section 16.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 16.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Agreement.

### § 16.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Agreement for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

## ARTICLE 17 HIPAA AND HITECH

§ 17.4 Confidentiality: Contractor understands the Work location is situated within an area containing some of Owner's active healthcare clinics. As such, Protected Health Information ("PHI") may inadvertently be exposed to Contractor's employees, agents and/or subcontractors during the normal

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course of business. The Parties shall comply with all federal and state laws, rules, and regulations regarding the confidentiality of patient information, including, but not limited to, compliance with the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), and the Health Information Technology for Economic and Clinical Health Act, as amended ("HITECH Act"), including all applicable rules, regulations, and official guidance promulgated in connection with HIPAA and the HITECH Act, by the U.S. Department of Health and Human Services or otherwise. Contractor shall ensure compliance of its employees, agents and/or subcontractors as applicable.

§ 17.4.1 The Parties will execute Exhibit A, Confidentiality Agreement Between Southern Nevada Health District and DM Stanek Corporation, which is attached hereto, and expressly incorporated by reference herein.

§ 17.4.2 Contractor will ensure that each of its employees, agents and/or subcontractors read, understand, and sign Exhibit B, Confidentiality Agreement for Contract Workers in Clinical Areas, before performing Work. Exhibit B is attached hereto, and expressly incorporated by reference herein. Upon Owner's request, Contractor will provide a true and correct copy of each signed Exhibit B to Owner.

#### ARTICLE 18 OTHER TERMS AND CONDITIONS

§ 18.1 Appropriation of Funds: The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Owner for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the Owner, this Agreement shall terminate, without penalty or expense to the Owner of any kind whatsoever, upon written notice being given by the Owner to the Contractor. Upon receipt of such notice, the Contractor shall take immediate action to mitigate any damage or additional expense.

§ 18.2 Conflict of Interest: By submitting a Proposal, Proposer certifies it has had no contact with an employee or Board member of the Owner in any manner which would give Contractor any advantage over any other Proposer. Owner's employees and Board members shall not receive any compensation, in any manner or form, nor have any interest, direct or indirect, of any kind or nature inconsistent with loyal service to the public. A violation of any of the above is grounds for rejection without further consideration.

§ 18.3 Public Records: Pursuant to NRS Chapter 239, information or documents, including this Agreement, and any other documents generated incidental thereto may be opened by Owner to public inspection and copying. Owner will have a duty to disclose unless a particular record is made confidential by law or common law balancing of interests.

§ 18.5 Authority: Owner and Contractor each represent and warrant to each other that each respectively has the authority to execute and deliver this Agreement and perform their respective obligations thereunder and that the execution, delivery and performance of this Agreement have been duly authorized by all necessary action by each respective Party.

§18.6 Severability: If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

§18.7 Mutual Cooperation: The Parties agree to cooperate fully in furtherance of this Agreement and provide assistance to one another in the investigation and resolution of any complaints, claims, actions or proceedings that may arise out of the provision of Services hereunder.

§18.7.1 The Parties shall take any additional acts or sign any additional documents as is reasonably necessary, appropriate, or convenient to achieve the purposes of this Agreement.

§18.8 Non-Exclusivity: This Agreement is non-exclusive and both Parties remain free to enter into similar agreements

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with third parties. Contractor may, during the term of this Agreement or any extension thereof, perform services for any other clients, persons, or companies as Contractor sees fit, so long as the performance of such services does not interfere with Contractor's performance of obligations under this Agreement, and does not, in the opinion of Owner, create a conflict of interest.

**§18.9 Limited Liability:** Owner will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Agreement liability of Owner and/or Contractor shall not be subject to punitive damages. To the extent applicable, actual agreement damages for any breach shall be limited by NRS 335.260 and NRS 354.626.

**§18.10 Non-Discrimination:** During the performance of this Agreement, Contractor and its subcontractors shall not deny the Agreement's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability; nor shall they discriminate unlawfully against any employee or applicant for employment because of race, sex, color, religion, age, ancestry, national origin, marital status, status as a disabled veteran, or veteran of the Vietnam era, disability, sexual orientation or gender identity or expression. Likewise, Owner and Contractor agree that each will comply with all state and federal employment discrimination statutes, including but not limited to Title VII, and the American with Disabilities Act.

**§18.10.1** Contractor shall include the nondiscrimination and compliance provisions of Section 18.10 in all subcontracts to perform Work under the Agreement.

**§18.11 Relationship of the Parties.** The Parties agree that the contractual relationship of Contractor to Owner is one solely of an independent contractor in all respects and that this Agreement and/or any other Contract Documents do not in any way create a partnership, joint venture, or any other relationship between Owner and Contractor other than the contractual relationship as specified in this Agreement.

**§18.12 Owner's Name and Logo:** Contractor may not use Owner's name, mark, logo, design or other Owner symbol for any purpose without Owner's prior written consent. Contractor agrees that Owner, in its sole discretion, may impose restrictions on the use of its name and/or logo. Owner retains the right to terminate, with or without cause, Contractor's right to use the Owner's name and/or logo.

**§18.13 Certification, Restriction of Boycott of Israel:** Pursuant to NRS 332.065, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Agreement not to engage in, a boycott of Israel.

**§18.14 Statement of Eligibility.** Each Party acknowledges to the best of its respective knowledge, information, and belief, and to the extent required by law, neither it nor any of its employees/contractors is/are: i) currently excluded, debarred, suspended, or otherwise ineligible to participate in federal health care programs or in federal procurement or non-procurement programs; and ii) has/have not been convicted of a federal or state offense that falls within the ambit of 42 USC 1320a-7(a).

**§18.15 Counterparts:** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but which together shall constitute one instrument. Facsimile or electronic transmissions of documents and signatures shall have the same force and effect as originals.

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This Agreement is entered into as of the day and year first written above.

By:

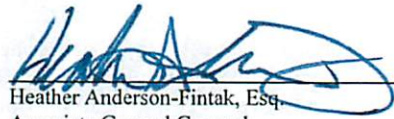
**OWNER** *(Signature)*

Joseph P. Iser, MD, DrPH, MSc  
Chief Health Officer  
Southern Nevada Health District

**CONTRACTOR** *(Signature)*

Mark Stanek  
President  
DM Stanek Corporation  
LICENSE NO.: 0059297  
JURISDICTION: Nevada State Contractors Board

APPROVED AS TO FORM



Heather Anderson-Fintak, Esq.  
Associate General Counsel  
Southern Nevada Health District

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**EXHIBIT A  
CONFIDENTIALITY AGREEMENT  
BETWEEN  
SOUTHERN NEVADA HEALTH DISTRICT  
AND  
DM STANEK CORPORATION**

This Confidentiality Agreement ("Agreement") is made and entered into this 26th day of September, 2019 between the Southern Nevada Health District ("Covered Entity"), and DM Stanek Corporation ("Contractor"), (individually referred to as "Party" or collectively as "Parties").

**WITNESSETH:**

WHEREAS, the Department of Health and Human Services ("HHS") has promulgated regulations at 45 CFR Part 160 and 164, implementing the privacy and electronic security requirements set forth in the Administrative Simplification provision of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"); and

WHEREAS, Contractor provides services to Covered Entity pursuant to one or more contractual relationships, said Agreements are detailed below and are hereinafter referred to as "Service Agreements," and

WHEREAS, in the course of fulfilling its responsibilities under such Service Agreements, Contractor may have access to Protected Health Information (as defined below); and

WHEREAS, Service Agreements are hereby incorporated by reference and shall be taken and considered as a part of this document as if fully set out herein; and

NOW THEREFORE, in consideration of the Parties continuing obligations under the Service Agreement(s) and other good and valuable consideration, the Parties mutually agree to the provisions of this Agreement to address the requirements of the HIPAA Rules, establish satisfactory assurances the Contractor will appropriately safeguard any Protected Health Information ("PHI") Contractor's workforce members and/or subcontractors may be exposed to incidental to their on-site work at the Covered Entity's premises, and, therefore, execute this Agreement.

**1. AGREEMENTS AFFECTED BY THIS CONFIDENTIALITY AGREEMENT**

Contractor will provide services to Covered Entity pursuant to the following Service Agreements:

Standard Short Form of Agreement Between Owner and Contractor C2000032

**2. DEFINITIONS**

Any terms used, but not otherwise defined in this Agreement shall have the same meaning as those terms in 45 CFR Parts 160 and 164.

- i) "Breach" means the acquisition, access, use, or disclosure of PHI a manner that is not permitted under the privacy regulations which compromises the security or privacy of the PHI. Any unpermitted access, use, or disclosure is presumed a breach absent a demonstration of a low probability that the PHI has been compromised.
- ii) "Protected Health Information" ("PHI") means individually identifiable health information including, without limitation, all data, documentation, demographic, medical, and financial information collected from an individual which relates to the past, present, or future physical or mental health, condition, provision of health care, or payment for the provision of health care to an individual. PHI includes without limitation "Electronic Protected Health Information" as defined below.



- iii) "HIPAA Rules" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and 164.
- iv) "Required by Law" has the same meaning as the term "required by law" in 45 CFR § 164.103.
- v) "Workforce Member" means employees, volunteers, trainees, and other persons whose conduct in the performance of work for Contractor is under Contractor's direct control, whether or not they are paid by Contractor.

### 3. CONTRACTOR CONFIDENTIALITY REQUIREMENTS

Contractor acknowledges and agrees:

- i) Contractor does not have need to access or view PHI and will not attempt to access or view PHI.
- ii) To maintain the confidentiality of any PHI, Contractor's workforce members and/or subcontractors may incidentally or inadvertently encounter, view, or have access to while providing services to the Covered Entity.
- iii) To notify the Covered Entity of any access of PHI by its workforce members and/or subcontractors that it becomes aware of, and to remove any workforce members and/or subcontractors who have intentionally accessed PHI at the work site.
- iv) To cooperate with the Covered Entity and to perform activities deemed necessary by the Covered Entity to mitigate any harmful effects as a result of a wrongful access or disclosure of PHI by the Contractor.
- v) In case of any conflict between this Agreement and the Service Agreements, this Agreement shall govern.
- vi) To ensure any agent, including any subcontractor the Contractor engages to complete work at the Covered Entity's site, agrees to the same restrictions and conditions that apply through this Confidentiality Agreement with respect to such PHI.
- vii) To ensure that all Contractor workforce members and/or subcontractors accessing the Covered Entity's worksite agree to and sign the *Confidentiality Agreement for Contract Workers in Clinical Areas* form supplied by the Covered Entity. Contractor will maintain copies of the signed agreements for six full fiscal years from the date of termination of the Service Agreement, and will provide them upon request by the Covered Entity.
- viii) To require all Contractor workforce members on-site to wear identification badges, issued by the Covered Entity, within plain view on their person with the photo facing outward.
- ix) To restrict Contractor workforce members to their assigned work areas and public areas of the Covered Entity's site.
- x) To prohibit all workforce members (including subcontractors) from taking any non-work related photographs or videos while on the Covered Entity's site. Any work-related photos or videos will not capture images of the Covered Entity's staff members or clients, and will require Covered Entity's prior approval in writing.

### 4. TERMINATION

- i) Covered Entity shall have the right to terminate this Agreement and the Service Agreement(s) immediately if Covered Entity determines that Contractor has violated any material term of this Agreement.
- ii) If Covered Entity reasonably believes that Contractor has violated a material term of this Agreement, where practicable, Covered Entity shall either:
  - a. give written notice to Contractor with an opportunity to reasonably and promptly cure or end the violation and terminate the Agreement if the Contractor does not cure the breach or end the violation within the reasonable time specified; or
  - b. terminate this Agreement and the Service Agreement(s) immediately.
- iii) This Agreement shall terminate in the event that the underlying relationship, functions, or services that gives rise to the necessity of this Agreement terminates for any reason. Upon such termination, the provisions of this Agreement which expressly or by their nature survive expiration or termination will remain in effect.

#### 5. MISCELLANEOUS

- i) Except as expressly stated herein, the Parties to this Agreement do not intend to create any rights in any third parties.
- ii) The obligations of the Contractor under this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Service Agreement(s) and/or the business relationship of the Parties, and shall continue to bind the Contractor, its subcontractors, agents, employees, contractors, successors, and assigns.
- iii) The Contractor will indemnify and hold harmless Covered Entity and any of its officers, directors, employees, or agents against any claim, cause of action, liability, damage, cost, or expense, including reasonable attorneys' fees and court or proceeding costs, arising out of or in connection with any breach of the terms of this Agreement, any Breach of Private information under the control of the Contractor or its agents or subcontractors that requires notification under the HIPAA Rules or state law, or any failure to perform its obligations with respect to Private Information by the Contractor, its officers, employees, agents, or any person or entity under the Contractor's direction or control.
- iv) This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.
- v) The Parties are independent entities and nothing contained herein shall be construed or deemed to create a relationship of employer and employee, principal and agent, partners, or any relationship other than that of independent parties voluntarily cooperating with each other solely for the purpose of carrying out the provisions herein.
- vi) This Agreement will be governed by the laws of the State of Nevada.
- vii) Failure to declare a breach or the actual waiver of any particular breach of the Agreement or Service Agreement(s) or its material or nonmaterial terms by either Party shall not operate as a waiver by such Party of any of its rights or remedies as to any other breach.

- viii) **Waiver of any term, provision or condition of this Agreement, in any one or more instances, shall not be deemed to be construed as a further waiver from any such term, provision or condition, or as a waiver of any other term, provision or condition of this Agreement.**
- ix) **Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and the Contractor to comply with the HIPAA Rules.**
- x) **Any reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.**
- xi) **In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.**
- xii) **This Agreement is the result of the joint efforts of Covered Entity and the Contractor, and each provision hereof has been subject to the mutual consultation, negotiation and agreement of the Parties and there shall be no construction against any Party based on any presumption of that Party's involvement in the drafting thereof.**
- xiii) **This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument.**

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

**COVERED ENTITY  
SOUTHERN NEVADA HEALTH DISTRICT**

**CONTRACTOR  
DM STANEK CORPORATION**

By: \_\_\_\_\_  
Name: Joseph P. Iser, MD, DrPH, MSc  
Title: Chief Health Officer

By: \_\_\_\_\_  
Name: Mark Stanek  
Title: President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B  
CONFIDENTIALITY AGREEMENT FOR CONTRACT WORKERS IN CLINICAL AREAS**

The Southern Nevada Health District ("Health District") runs healthcare clinics at 280 S. Decatur Blvd, Las Vegas, Nevada ("Location"). The Health District must keep patient information confidential to follow state and federal laws. We take this obligation to protect patient privacy very seriously.

While you work at the Location, you may see or hear patient information that is confidential. It could be in charts or other paper records, electronic records, or conversations. You may accidentally see or hear names of patients, medical information, financial information, and/or addresses. This is all confidential information. The Health District needs you to agree to keep it confidential.

By signing below, you agree you will:

- Keep any patient information you see or hear confidential, and not discuss it with anyone.
- Not access any Health District confidential information (paper or electronic) on purpose.
- Not take or copy any confidential information.
- Not take any photographs or videos while working at the Location, unless Health District gives your employer written permission because it's necessary for you to get your job done.
- Only go into the Health District's public areas and the area where you are assigned to work.
- Not speak with patients in Health District's public areas unless you have to for their safety.
- Tell your supervisor and your Health District representative right away if you accidentally find or hear any confidential information while doing your job at the Location.
- Be removed from the Location by your employer if you don't follow this agreement.

Employer: \_\_\_\_\_

\_\_\_\_\_  
Employee Name (print)

\_\_\_\_\_  
Employee Signature

Date: \_\_\_\_\_