

AIA® Document B101® – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 8th day of January in the year 2024

BETWEEN the Landscape Architect's client identified as the Owner:

Town of Moncks Corner, SC
Jeff Lord, Town Administrator
118 Carolina Avenue
Moncks Corner, SC 29461

and the Landscape Architect:

Wood+Partners, Inc. WP
PO Box 23949
Hilton Head Island, SC 29925

for the following Project:

Moncks Corner Lacey Park, Tennis Courts, and Pickleball Courts
Town of Moncks Corner, SC
Project Locations:

Project A – Lacey Park Upgrades: This project is for upgrades to the Dr. William H. Lacey Memorial Park located at 115 W. Main Street. The parcel (TMS #142-06-04-029) is approximately 2.84 acres with two (2) existing tennis courts, playground, wooden bridge and a picnic pavilion and is zoned C-1 (Office & Institutional District).

Project B – Sports Complex Pickleball Courts: This project is for new pickleball courts and pavilion at the existing sports complex located at the corner of President Circle and Leisure Time Place. The project site is a portion of TMS #142-08-02-004 which totals approximately 52.22 acres and is zoned M-1 (Light Industrial District) and C-2 (General Commercial District).

Project C – Berkeley Middle Tennis Court Upgrades: This project is for upgrades to the two (2) existing tennis courts located at Berkeley Middle School (727 Martin Luther King Drive). The parcel (TMS #142-04-01-048) is approximately 0.62 acres and is zoned R-2 (Single-Family Residential District).

The scope of services for this project includes Pre-Design, Schematic Design, Design Development, Construction Document, Permitting, Bidding and Construction Phase Services for park improvements as reflected on the Owner Approved Conceptual Master Plan dated 2023 and OPC dated September 15, 2023.

Services shall include normal civil, structural, and electrical engineering, landscape architecture; irrigation design, architecture, and cost estimating services.

WP shall serve as the Prime Consultant and provide project management of the design team and Landscape Architecture services.

The Owner and Landscape Architect 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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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(Paragraph deleted)

§ 1.1.1 The Owner's program for the Project:

(Paragraph deleted)

The Scope of Basic Services for this project shall be based on the Owner Approved Conceptual Master Plan dated 2023 and sent on September 28, 2023, and the OPC dated September 13, 2023 (Exhibit A). The development program for this project includes park improvements to Lacey Park with new tennis courts, parking areas, sidewalks, restroom building, shade structures, playground, and landscape; improvements to Tennis Courts with new courts, sidewalks, shade structure, parking lot area, and landscape; and improvements to the Regional Sports Complex with new Pickleball Courts, sidewalks, shade structure, and landscape.

§ 1.1.2 The Project's physical characteristics:

(Paragraph deleted)

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Paragraph deleted)

Conceptual cost estimates reflect a total cost of approximately \$2.5 Million. The construction budget will be further refined at the conclusion of the schematic design phase and a final construction budget will be established at that time and if necessary, scope of work will be modified to reflect the Owner's budget.

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

To be determined

.2 Construction commencement date:

To be determined

.3 Substantial Completion date or dates:

To be determined

.4 Other milestone dates:

To be determined

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:

(Paragraph deleted)

Competitive bidding, in a single bid package which will include a base bid for items within the project budget. WP will utilize the Town's standard procurement documents and process to prepare bid documents.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

Not Applicable

(Paragraph deleted)

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:

Owner's Representative
Jeff Lord
Town Administrator
Phone: 843-719-7910

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Landscape Architect's submittals to the Owner are as follows:

None

§ 1.1.9 The Owner shall retain the following consultants and contractors:

(Paragraphs deleted)

§ 1.1.10 The Landscape Architect identifies the following representative in accordance with Section 2.3:

Eric Walsnovich, Principal
Phone: 843-681-6618 x 243
Email Address: ewalsnovich@woodandpartners.com
PO Box 23949
Hilton Head Island, SC 29925
Street Address: 7 Lafayette Place, Hilton Head Island, SC 29926

§ 1.1.11 The Landscape Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Architect, MEP Engineer, and Structural Engineer:

Coast Architects
671 St. Andrews Blvd.
Charleston, SC 29407

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843-763-7064

.2 Civil Engineer:

Cypress Engineering
412 N. Gum St.
Suite A
Summerville, SC 29483
843-225-5151

.3 Irrigation Designer:

Clark Irrigation Design & Consulting, Inc.
PO Box 693
Lavonia, GA 30553
706-356-0309

.4 Surveyor:

McKim & Creed
454 Deanna Ln., Suite A
Charleston, SC 29492
843-459-7894

.5 Geotechnical Engineer:

Terracon
1800 Reynolds Avenue
North Charleston, SC 29405
843-277-8416

§ 1.1.11.2 Consultants retained under Supplemental Services:

Not Applicable

§ 1.1.12 Other Initial Information on which the Agreement is based:

Within the Pre-Design Scope of Work, a structural engineer will review and provide an assessment of the existing pedestrian bridge located at Lacey Park. Improvements or replacement of this bridge is not included in this Agreement, and would be Supplemental Services requiring additional bridge design compensation.

§ 1.2 The Owner and Landscape Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Landscape Architect shall appropriately adjust the Landscape Architect's services, schedule for the Landscape Architect's services, and the Landscape Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

(Paragraphs deleted)

ARTICLE 2 LANDSCAPE ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Landscape Architect shall provide professional services as set forth in this Agreement. The Landscape Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services

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required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Landscape Architect shall perform its services consistent with the professional skill and care ordinarily provided by Landscape architects practicing in the same or similar locality under the same or similar circumstances. The Landscape Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Landscape Architect shall identify a representative authorized to act on behalf of the Landscape Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Landscape Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Landscape Architect's professional judgment with respect to this Project.

§ 2.5 The Landscape Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Landscape Architect normally maintains, the Owner shall pay the Landscape Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than one million (\$ 1,000,000) for each occurrence and two million (\$ 2,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Landscape Architect with policy limits of not less than one million (\$ 1,000,000) per 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.

§ 2.5.3 The Landscape Architect 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 such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than one million (\$ 1,000,000) each accident, one million (\$ 1,000,000) each employee, and one million (\$ 1,000,000) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than one million (\$ 1,000,000) per claim and two million (\$ 2,000,000) in the aggregate.

§ 2.5.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Landscape Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Landscape Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Landscape Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

ARTICLE 3 SCOPE OF LANDSCAPE ARCHITECT'S BASIC SERVICES

§ 3.1 The Landscape Architect's Basic Services consist of those described in this Article 3 and include usual and customary landscape architectural, architecture, irrigation design, civil, structural, plumbing, and electrical engineering, land surveying, and geotechnical services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Landscape Architect shall manage the Landscape Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Landscape Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Landscape Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Landscape Architect shall provide prompt written notice to the Owner if the Landscape Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Landscape Architect shall submit for the Owner's approval a schedule for the performance of the Landscape Architect's services. The schedule initially shall include anticipated dates for the commencement of professional services as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. With the Owner's approval, the Landscape Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Landscape Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Landscape Architect's written approval.

§ 3.1.5 The Landscape Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Landscape Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Landscape Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Pre-Design Services including Land Surveying and Geotechnical Reports

(Paragraphs deleted)

§ 3.2.1 The Landscape Architect will engage McKim & Creed for basic land surveying services as part of this Agreement and shall include the (3) sites shown in Exhibit B, and as follows:

- Survey work will be performed to the Standards of Practice for Land Surveying in South Carolina and prepared in accordance with the Standards of Practice for Surveying, Code of Regulations – Chapter 49, Article 4.
- Horizontal survey control will be referenced to SC Grid NAD 83(2011)
- Vertical Survey control will be referenced to NAVD88
- Recover boundary corners to verify existing boundary lines crossing survey limits and immediately adjacent to survey limits
- Set minimum of two temporary benchmarks on site
- Locate buildings, roads, parking lots, paved areas, concrete areas and pads, sidewalks, bollards, curbing, signs, and fences, as well as parking striping.
- Locate curb inlets, catch basins, yard inlets, junction boxes, drainage pipes, culverts along with material, size and invert elevations.
- Locate utilities such as utility poles, area lights, transformer pads, pedestals, fire hydrants, water meters, water valves, cleanouts, sanitary sewer manholes – West Locating Service will be utilized to provide underground utility locating.
- Show breaks in grade, high points, low points, edge of ponds, ditches, and waterways
- Locate trees per Regulations.
- Adjacent parcels owner information
- Distance to nearest intersection
- Locate nearest fire hydrant to site via bearing & distance, unless hydrant is on site.
- Contours will be drawn at 1-foot intervals

These services do not include preparation of plats, consolidation of plats and/or easements.

§ 3.2.2 The Landscape Architect will engage Terracon for basic geotechnical services as part of this Agreement and shall include the (3) sites shown in Exhibit B, and as follows: CPT soundings for structures, multiple hand auger

borings per site, a private locate, and pavement coring where existing courts are that will be replaced, to get soils data at those locations.

Upon completion of the field exploration and engineering analyses, a written engineering report with recommendations will be prepared and delivered.

§ 3.3 Schematic Design Phase Services

§ 3.3.1 The Landscape Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Landscape Architect's services.

(Paragraph deleted)

§ 3.3.2 The Landscape Architect shall review and incorporate findings from the land surveys and geotechnical reports.

§ 3.3.3 Based on the Owner's approval of the previously prepared conceptual master plans and Owner input regarding the program, the Landscape Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans.

§ 3.3.4 The Landscape Architect shall consider design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.3.5 The Landscape Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.3.6 The Landscape Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.7 The Landscape Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Landscape Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts to fix and describe the size and character of the Project as to landscape architectural, architectural, civil, and site electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.4.2 The Landscape Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.3 The Landscape Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

(Paragraphs deleted)

§ 3.5 Construction Documents Phase Services

§ 3.5.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Landscape Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the

construction of the Work. The Owner and Landscape Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Landscape Architect shall review in accordance with Section 3.6.4.

§ 3.5.2 The Landscape Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

(Paragraphs deleted)

§ 3.5.3 During the development of the Construction Documents, the Landscape Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Landscape Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

(Paragraphs deleted)

§ 3.5.4 The Landscape Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.5.5 The Landscape Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.6 Permitting Services

§ 3.6.1 The Civil Engineer shall provide coordination and submittal of necessary items to obtain the following permits:

1. Town of Moncks Corner Zoning / Site Plan approval
2. Town of Moncks Corner Stormwater approval
3. SCDHEC-OCRM Land Disturbance Permit
4. SCDHEC-OCRM Coastal Zone Consistency approval
5. Driveway & Utility Encroachment Permit as needed
6. Water & sewer service approval

§ 3.6.2 Permit review fees are not included in the Agreement and will be paid by the Owner.

§ 3.7 Procurement Phase Services

§ 3.7.1 General

The Landscape Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Landscape Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.7.2 Competitive Bidding

§ 3.7.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.7.2.2 The Landscape Architect shall assist the Owner, who will take the lead in bidding the Project. The Landscape Architect will provide assistance by:

- .1 Making documents available to the Owner who will be facilitating the distribution of Bidding Documents to prospective bidders;
- .2 Attending with the Owner who will be organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 Reviewing with the Owner who will be organizing and conducting the opening of the bids.

§ 3.7.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Landscape Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.8 Construction Phase Services

§ 3.8.1 General

§ 3.8.1.1 The Landscape Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Landscape Architect's services under this Agreement unless the Owner and the Landscape Architect amend this Agreement.

§ 3.8.1.2 The Landscape Architect shall advise and consult with the Owner during the Construction Phase Services. The Landscape Architect shall have authority to act on behalf of the Owner only to the extent provided in this Landscape Agreement. The Landscape Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Landscape Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Landscape Architect shall be responsible for the Landscape Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.8.1.3 Subject to Section 4.2 and except as provided in Section 3.8.6.5, the Landscape Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Landscape Architect issues the final Certificate for Payment.

§ 3.8.2 Evaluations of the Work

§ 3.8.2.1 The Landscape Architect and/or our sub-consultants shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Landscape Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Landscape Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

(Paragraph deleted)

§ 3.8.2.2 The Landscape Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Landscape Architect considers it necessary or advisable, the Landscape Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Landscape Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Landscape Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

(Paragraph deleted)

§ 3.8.2.3 The Landscape Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Landscape Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.8.2.4 Interpretations and decisions of the Landscape Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Landscape Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Landscape Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

(Paragraph deleted)

§ 3.8.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Landscape Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

(Paragraph deleted)

§ 3.8.3 Certificates for Payment to Contractor

§ 3.8.3.1 The Landscape Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Landscape Architect's certification for payment shall constitute a representation to the Owner, based on the Landscape Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Landscape Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Landscape Architect.

(Paragraph deleted)

§ 3.8.3.2 The issuance of a Certificate for Payment shall not be a representation that the Landscape Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

(Paragraph deleted)

§ 3.8.3.3 The Landscape Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.8.4 Submittals

(Paragraph deleted)

§ 3.8.4.1 The Landscape Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Landscape Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Landscape Architect's professional judgment, to permit adequate review.

(Paragraph deleted)

§ 3.8.4.2 The Landscape Architect and/or our sub-consultants shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Landscape Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Landscape Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.8.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Landscape Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Landscape Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Landscape Architect. The Landscape Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Landscape Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

(Paragraph deleted)

§ 3.8.4.4 Subject to Section 4.2, the Landscape Architect and/or our sub-consultants shall review and respond to requests for information about the Contract Documents. The Landscape Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Landscape Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Landscape Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

(Paragraphs deleted)

§ 3.8.4.5 The Landscape Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

(Paragraph deleted)

§ 3.8.5 Changes in the Work

(Paragraphs deleted)

§ 3.8.5.1 The Landscape Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Landscape Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

(Paragraphs deleted)

§ 3.8.5.2 The Landscape Architect shall maintain records relative to changes in the Work as a result of change orders and construction change directives.

(Paragraph deleted)

§ 3.8.6 Project Completion

(Paragraphs deleted)

§ 3.8.6.1 The Landscape Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Landscape Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

(Paragraphs deleted)

§ 3.8.6.2 The Landscape Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

(Paragraph deleted)

§ 3.8.6.3 When Substantial Completion has been achieved, the Landscape Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

(Paragraphs deleted)

§ 3.8.6.4 The Landscape Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.8.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Landscape Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below that are not included in Basic Services are indicated as such (NIC) but may be required for the Project. The Landscape Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Landscape Architect’s responsibility, and the Owner shall compensate the Landscape Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Landscape Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

Supplemental & Basic Services	Responsibility <i>(Landscape Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	(NIC)
§ 4.1.1.2 Multiple preliminary designs	(NIC)
§ 4.1.1.3 Measured drawings	(NIC)
§ 4.1.1.4 Existing conditions land surveys	Provided by Team’s Surveyor
§ 4.1.1.5 Site evaluation and planning	(NIC)
§ 4.1.1.6 Building Information Model management responsibilities	(NIC)
§ 4.1.1.7 Development of Building Information Models for post construction use	(NIC)
§ 4.1.1.8 Civil engineering	Provided by Team’s Civil Engineer
§ 4.1.1.9 Landscape Architectural Services	Provided by Team’s Landscape Architect
<i>(Row deleted)</i>	
§ 4.1.1.10 Architectural design	Provided by Team’s Architect
§ 4.1.1.11 Value analysis	(NIC)
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	(NIC)
§ 4.1.1.13 On-site project representation	(NIC)
§ 4.1.1.14 Conformed documents for construction	(NIC)
§ 4.1.1.15 As-designed record drawings	(NIC)
§ 4.1.1.16 As-constructed record drawings	(NIC)
§ 4.1.1.17 Post-occupancy evaluation	(NIC)
§ 4.1.1.18 Facility support services	(NIC)
§ 4.1.1.19 Tenant-related services	(NIC)
§ 4.1.1.20 Architect’s coordination of the Owner’s consultants	(NIC)
§ 4.1.1.21 Telecommunications/data design	(NIC)
§ 4.1.1.22 Security evaluation and planning	(NIC)
§ 4.1.1.23 Commissioning	(NIC)
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	(NIC)
§ 4.1.1.25 Fast-track design services	(NIC)
§ 4.1.1.26 Multiple bid packages	(NIC)
§ 4.1.1.27 Historic preservation	(NIC)
§ 4.1.1.28 Furniture, furnishings, and equipment design	(NIC)

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	Site Structural Review and Assessment and Electrical Engineering provided by Team's Architect
§ 4.1.1.29 Other services provided by specialty Consultants	Geotechnical Reports provided by Team's Geotechnical Consultant
§ 4.1.1.30 Other Supplemental Services	(NIC)

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Landscape Architect's responsibility is provided below.

See scope of Landscape Architect's Basic Services above

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

Not Applicable

(Paragraph deleted)

§ 4.2 Landscape Architect's Additional Services

The Landscape Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Landscape Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Landscape Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Landscape Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Landscape Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Landscape Architect shall not proceed to provide the following Additional Services until the Landscape Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Landscape Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Landscape Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Landscape Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the

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need. If, upon receipt of the Landscape Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Landscape Architect of the Owner's determination. The Owner shall compensate the Landscape Architect for the services provided prior to the Landscape Architect's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Landscape Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Landscape Architect and/or our sub-consultants shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. Construction phase services will be provided for items accepted in the base bid and based on a period of ten (8) months during construction plus two (2) months for startup, substantial completion, and final completion for a total of twelve (10) months. Periodic construction observation visits include visits by landscape architect, civil engineer, and architect during construction and as outlined below. We shall attend construction observation site visits generally every two weeks during appropriate phases of construction and provide field reports. If this ten-month period of time is exceeded by more than thirty (30) days, compensation for Basic Services required to complete observation of the Construction Contract will be provided as additional services. When the limits below are reached, the Landscape Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Up to twenty (20) visits to the site by Consultant Team Members during construction (one pre-construction site visit; two site visits per month for 8 months; one site visit each for substantial completion and final inspection).
- .3 One (1) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One (1) inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.7 and those services that do not exceed the limits and/or the number of trips set forth in Section 4.2.3, Construction Phase Services provided more than 30 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Landscape Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within thirty six (36) months of the date of this Agreement, through no fault of the Landscape Architect, extension of the Landscape Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Landscape Architect. The Owner and the Landscape Architect shall thereafter agree to a corresponding change in the Project's scope, quality, and schedule.

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§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Landscape Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Landscape Architect's services.

§ 5.4 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.5 The Owner shall coordinate the services of its own consultants with those services provided by the Landscape Architect. Upon the Landscape Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Landscape Architect in this Agreement, or authorize the Landscape Architect to furnish them as an Additional Service, when the Landscape Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.6 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.7 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.8 The Owner shall provide prompt written notice to the Landscape Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Landscape Architect's Instruments of Service.

§ 5.9 The Owner shall include the Landscape Architect in all communications with the Contractor that relate to or affect the Landscape Architect's services or professional responsibilities. The Owner shall promptly notify the Landscape Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Landscape Architect's consultants shall be through the Landscape Architect.

§ 5.10 Before executing the Contract for Construction, the Owner shall coordinate the Landscape Architect's duties and responsibilities set forth in the Contract for Construction with the Landscape Architect's services set forth in this Agreement. The Owner shall provide the Landscape Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.11 The Owner shall provide the Landscape Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Landscape Architect access to the Work wherever it is in preparation or progress.

§ 5.12 Within 15 days after receipt of a written request from the Landscape Architect, the Owner shall furnish the requested information as necessary and relevant for the Landscape Architect to evaluate, give notice of, or enforce lien rights.

(Paragraphs deleted)

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Landscape Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Landscape Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work,

and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Landscape Architect, represent the Landscape Architect's judgment as a design professional. It is recognized, however, that neither the Landscape Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Landscape Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Landscape Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Landscape Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Landscape Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Landscape Architect shall provide such an estimate, if identified as the Landscape Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Landscape Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Landscape Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Landscape Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Landscape Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Landscape Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Landscape Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Landscape Architect could not reasonably anticipate, the Owner shall compensate the Landscape Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Landscape Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Landscape Architect's modification of the Construction Documents shall be the limit of the Landscape Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Landscape Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Landscape Architect and the Landscape Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Landscape Architect and the Landscape Architect's consultants.

§ 7.3 The Landscape Architect grants to the Owner a nonexclusive license to use the Landscape Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Landscape Architect shall obtain similar nonexclusive licenses from the Landscape Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Landscape Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Landscape Architect and Landscape Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Landscape Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Landscape Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Landscape Architect and the Landscape Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Landscape Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case, not more than 10 years after the date of Substantial Completion of the Work. The Owner and Landscape Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Landscape Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Landscape Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Landscape Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Landscape Architect's services, the Landscape Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Landscape Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the

American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Paragraph deleted)

Arbitration pursuant to Section 8.3 of this Agreement

(Paragraphs deleted)

If the Owner and Landscape Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Landscape Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Landscape Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Landscape Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Landscape Architect's option, cause for suspension of performance of services under this Agreement. If the Landscape Architect elects to suspend services, the Landscape Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Landscape Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Landscape Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Landscape Architect's services. The Landscape Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Landscape Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Landscape Architect shall be compensated for expenses incurred in the interruption and resumption of the Landscape Architect's services. The Landscape Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Landscape Architect, the Landscape Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Landscape Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Landscape Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Landscape Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Landscape Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Landscape Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Landscape Architect the following fees:

(Paragraphs deleted)

.1 Termination Fee:

\$25,000

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

(Paragraph deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Landscape Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Landscape Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Landscape Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Landscape Architect to execute certificates, the proposed language of such certificates shall be submitted to the Landscape Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Landscape Architect to execute consents reasonably required to facilitate assignment to a lender, the Landscape Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Landscape Architect for review at least 14 days prior to execution. The Landscape Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Landscape Architect.

§ 10.6 Unless otherwise required in this Agreement, the Landscape Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Landscape Architect shall have the right to include photographic or artistic representations of the design of the Project among the Landscape Architect's promotional and professional materials. The Landscape Architect shall be given reasonable access to the completed Project to make such representations. However, the Landscape Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Landscape Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Landscape Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Landscape Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Landscape Architect's Services described under Article 3.2, the Owner shall compensate the Landscape Architect the following lump sum amounts for Pre-design Services, Design, Procurement and Construction Phase Services and Permitting Services, plus reimbursable project expenses as follows:

.1 Stipulated Sum

- a. Pre-Design Services:
 - i. Surveying, Geotechnical Report, and Lacey Park Bridge Inspection \$48,600
- b. Design, Procurement & Construction Phase Services:
 - i. Schematic Design \$9,000
 - ii. Design Development & Construction Documents \$126,000
 - iii. Procurement \$9,100
 - iv. Construction Phase \$38,800
 - Total Design, Procurement & Construction Phase Services \$182,900
- c. Permitting Services:
 - i. Permitting \$18,800
- d. Estimated Reimbursable Expenses:

(Paragraph deleted)

 - i. Estimated Reimbursable Expenses 10% of Total Compensation

§ 11.2 For the Landscape Architect’s Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Landscape Architect as follows:

To be determined if requested and/or needed

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Landscape Architect as follows:

To be determined if requested and/or needed

§ 11.4 Compensation for Supplemental and Additional Services of the Landscape Architect’s consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Landscape Architect plus one and fifteen one hundredths percent (1.15 %), or as follows:

(Paragraphs deleted)
 (Table deleted)
 (Paragraph deleted)

§ 11.7 The hourly billing rates for services of the Landscape Architect and the Landscape Architect’s consultants are set forth below. The rates shall be adjusted in accordance with the Landscape Architect’s and Landscape Architect’s consultants’ normal review practices.

Landscape Architect, Architect & Civil Engineer

Employee or Category	Rate (\$0.00)
Partner/ President/ Principal	\$250.00/ hour
Project Manager, Architect and/or Engineer	\$225.00/ hour
Landscape Architect, Architect, Engineer	\$200.00/ hour
Project Planner, CADD Tech	\$150.00/ hour
Clerical	\$90.00/ hour

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Landscape Architect and the Landscape Architect’s consultants directly related to the Project, as follows:

Init.

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Landscape Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Landscape Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Landscape Architect and the Landscape Architect's consultants plus 1.15 percent (15 %) of the expenses incurred.

§ 11.9 **Landscape Architect's Insurance.** If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Landscape Architect normally maintains, the Owner shall pay the Landscape Architect for the additional costs incurred by the Landscape Architect for the additional coverages as set forth below:

To be determined if requested and/or required

§ 11.10 **Payments to the Landscape Architect**

§ 11.10.1 **Initial Payments**

§ 11.10.1.1 An initial payment of zero (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

(Paragraph deleted)

§ 11.10.2 **Progress Payments**

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Landscape Architect's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Landscape Architect.

1.5 % per month

§ 11.10.2.2 The Owner shall not withhold amounts from the Landscape Architect's compensation to impose a penalty or liquidated damages on the Landscape Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Landscape Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

To be determined if requested and/or required

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Landscape Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Landscape Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Landscape Architect
- .2

(Paragraphs deleted)

Exhibits:

[
(Paragraphs deleted)

X] Other Exhibits incorporated into this Agreement:

EXHIBIT A – Conceptual Master Plans and Opinions of Probable Construction Costs

(Paragraphs deleted)

EXHIBIT B – Aerial Maps of Project Sites

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

OWNER *(Signature)*

Jeff Lord Town Administrator, Town of Moncks
Corner

(Printed name and title)

LANDSCAPE ARCHITECT *(Signature)*

Eric Walsnovich Principal, Wood+Partners, Inc.

(Printed name, title, and license number, if required)