

AMERICAN SOCIETY OF LANDSCAPE ARCHITECTS

STANDARD FORM CONTRACT FOR PROFESSIONAL SERVICES BETWEEN LANDSCAPE ARCHITECT AND CLIENT

Preliminary Provisions

Date

This Agreement is made as of July 16, 2019, between the Client and Landscape Architect for the Landscape Architectural Services as provided herein.

Client

Mayor Todd Jordan

NAME

71 East Troy Street / Tupelo / MS / 38804

ADDRESS / CITY / STATE / ZIP

Mayor City of Tupelo

RELATIONSHIP TO PROJECT OWNER

Owner

The Client acknowledges that it is authorized to enter into this Agreement.

City of Tupelo / Mississippi

NAME

ENTITY

CORPORATION, LIMITED LIABILITY COMPANY MUNICIPALITY, GOVERNMENT OR INDIVIDUAL/ MARRIED COUPLE-SELECT ONE

ADDRESS/ CITY/ STATE/ ZIP (IF DIFFERENT FROM CLIENT ADDRESS ABOVE)

Landscape Architect

Sloan Landscape Architect, LLC

NAME

ENTITY

SOLE PROPRIETOR, PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY

301 West Main Street / Suite II / Tupelo / MS / 38804

ADDRESS / CITY / STATE / ZIP

Shipman Sloan / 662-610-5588

CONTACT INFORMATION

Project

(General description of Project: name, purpose, baseline information)

Phase II Ballard Park: Playground at Ballard Park RFP- Construction Administration. SLA will help facilitate the RFP process, review and grading of proposals, and the awarding of a contract to the successful proposer. Once a contract is in place, SLA will coordinate with the owner and contractor to ensure that the contract is carried out and a successful project is constructed.

Scope of Services

The scope of services to be provided by the Landscape Architect under this Agreement and the Supplemental Services which may be provided when requested in writing by the Client are described in *Exhibit "A."*

Compensation

Compensation for Landscape Architectural Services performed under this Agreement shall be an hourly not to exceed \$12,000.00 billed at an hourly rate of \$125.00 plus Reimbursable Expenses as defined in Article 4 and is subject to the provisions of this Agreement. Supplemental Services, when requested in writing by the Client, shall be compensated on an hourly basis at the rates provided in *Exhibit "B"* or on the basis of a negotiated fee provided in an amendment to this Agreement.

Article 1

Landscape Architectural Services

1.1 Standard of Care

The Landscape Architectural Services shall be performed with care and diligence in accordance with the professional standards applicable at the time and in the location of the Project and appropriate for a project of the nature and scope of this Project.

1.2 Coordination

The Landscape Architect shall coordinate the services of its consultants and shall cooperate with the Client's representatives and separate consultants in the best interest of the Project.

1.3 Representations

The Landscape Architect represents that it and its consultants have and shall maintain throughout the performance of the Landscape Architectural Services under this Agreement the requisite licenses, registrations, and/or certifications required for the performance of these Services in the jurisdiction in which the Project is located.

1.4 Scope of Services

The Scope of Landscape Architectural Services to be provided under this Agreement is detailed in *Exhibit "B."*

1.5 Supplemental Services

Supplemental Services are detailed in *Exhibit "B."* Supplemental Services are beyond the basic Scope of Services, and when requested in writing by the Client, shall entitle the Landscape Architect to additional compensation (either on the hourly basis stated in *Exhibit "C"* or on the basis of a negotiated sum) beyond the Compensation stated in the Preliminary Provisions.

1.6 Approval of Services/Changes to Approved Services

The Landscape Architect shall proceed with a phase or design package of the Landscape Architectural Services only after receiving the Client's written approval of the Services and deliverables provided and written authorization to proceed with the next phase. Revisions to drawings or other documents shall constitute Supplemental Services when made necessary because of Client-requested changes to previously approved drawings or other documents, or because of Client changes to previous Project budget parameters or Program requirements.

1.7 Opinions of Probable Construction Costs

Opinions of probable construction costs provided by the Landscape Architect are based on the Landscape Architect's familiarity with the landscape construction industry and are provided only to assist the Client's budget planning; such opinions shall not be construed to provide a guarantee or warranty that the actual construction costs will be within the Project budget parameters at the time construction bids are solicited or construction contracts negotiated. Unless expressly agreed in writing and signed by the parties, no fixed limit of construction costs is established as a condition of this Agreement by the furnishing of opinions of probable construction costs.

1.8 Certifications

The Client shall submit copies of proposed certificates or certifications, if any, to the Landscape Architect for review and approval at least 7 days prior to the date that the Client desires the Landscape Architect to execute them. The Client shall not request certifications which would require legal opinions or knowledge or services beyond the scope of the Agreement. All such certifications shall be limited to professional opinions rendered in accordance with generally accepted standards of professional practice.

1.9 Construction Safety

The presence of the Landscape Architect, its employees, or consultants at the Project site shall not be deemed an assumption by the Landscape Architect of any obligations, duties, or responsibilities for safety, including but not limited to construction means, methods, sequences, techniques, or procedures necessary for performing, superintending, or coordinating the work of the Project in accordance with the Construction Documents or regulatory health or safety requirements, if any. The Landscape Architect, its employees, and consultants have no authority to exercise any control over any construction contractor, its employees, or subcontractors in connection with their work or health and safety programs and procedures.

Article 2 Client's Responsibilities

2.1 Information

- 2.1.1 The Client shall provide site surveys and legal information, including as applicable: written legal description of the site, a land survey by a professional land surveyor who is licensed or registered under the law of the jurisdiction in which the property is located, rights-of-way, easements, encroachments, zoning, covenants, and deed or other restrictions, if any.
- 2.1.2 The Client shall provide for the Landscape Architect's right to enter from time to time, property owned by the Client or others, so the Landscape Architect may perform the Landscape Architectural Services.
- 2.1.3 The Client shall be responsible for all legal, accounting, and insurance services the Client may require or deem necessary in the interest of the Project.

2.2 Independent Testing

The Client shall provide independent testing services when deemed necessary to determine site conditions such as soil and subsoil conditions, water, pollution, and hazardous waste presence and characteristics.

2.3 Reliance

The Landscape Architect shall be entitled to rely on the accuracy and completeness of the information, test results, and work product provided by the Client and the Client's consultants. The Landscape Architect shall not be responsible for calculations, specifications, or designs based on erroneous, inaccurate, or incomplete information provided by the Client, provided that the Landscape Architect has acted in accordance with the standard of care described in section 1.1, above.

2.4 Client's Representative

The Client shall designate a representative with authority to act on the Client's behalf with regard to the Project.

2.5 Approvals

Client's decisions, approvals, reviews, and responses shall be communicated to the Landscape Architect in a timely manner so as not to delay the performance of the Landscape Architectural Services. Comments from the Client's Representative shall be a consolidation of all comments of interested user groups or entities to provide clear direction to the Landscape Architect and to avoid delays.

2.6 Notice of Nonconformance

If the Client observes or becomes aware of errors or omissions or inconsistencies in any documents provided by the Landscape Architect or any fault or defect in the Project, the Client shall promptly give written notice to the Landscape Architect.

2.7 Project Permit and Review Fees

The Client shall pay all fees required to secure jurisdictional approvals for the Project.

Article 3

Ownership of Documents

3.1 The Landscape Architect shall be deemed the author and owner of all deliverables provided to the Client, including but not limited to plans, drawings, specifications, Construction Documents, displays, graphic art, photographs, and other images and devices in any medium, including electronic data or files, which are developed, created, or derived pursuant to this Agreement by the Landscape Architect (collectively, the "Design Materials").

3.2 Subject to payment by the Client of all Compensation and Reimbursable Expenses owed to the Landscape Architect, the Landscape Architect grants to the Client an irrevocable, nonexclusive license to reproduce the Design Materials solely for the construction of the Project and for information and reference with respect to the use of the Project. Termination of this Agreement prior to the completion of the Project shall terminate this license; all Design Materials and copies thereof in the Client's possession or control shall be returned to the Landscape Architect within 21 days of the notice of termination.

3.3 The Client, to the fullest extent permitted by law, shall indemnify and hold harmless the Landscape Architect for costs, including legal fees and defense costs, liability or loss, which result from unauthorized modification of the Design Materials, if any, or the use of the Design Materials for any purpose other than the Project.

Article 4

Landscape Architect Compensation

4.1 Compensation for the Scope of Services described in *Exhibit "B"* to be performed under this Agreement shall be as indicated in the Preliminary Provisions plus Reimbursable Expenses as defined below. Supplemental Services, described in section 1.5 of *Exhibit "A,"* when requested in writing by the Client, shall be compensated on an hourly basis at the rates provided in *Exhibit "B"* or on the basis of a negotiated fee provided in an amendment to this Agreement.

4.2 Reimbursable Expenses are expenditures as made by the Landscape Architect, its employees, and consultants in the interest of the Project plus an administrative fee of 0%. Reimbursable Expenses include, but are not limited to the following:

- 4.2.1 costs of renderings, photographs, models, and mock-ups requested by the Client.
- 4.2.2 expense of professional liability insurance dedicated exclusively to the Project.
- 4.2.3 costs of printing and delivering bid packages.
- 4.2.4 services of professional consultants which cannot be quantified at the time of contracting; and
- 4.2.5 other, similar direct Project-related expenditures.

4.3 Payments

- 4.3.1 An initial payment of \$0% shall be made upon execution of this Agreement. this amount shall be credited to the Client's account at final payment. This shall be the minimum payment due under this Agreement.

- 4.3.2 Monthly payments to the Landscape Architect shall be based on (1) the number of hours spent working on the project billed according to hourly rate in *Exhibit "B"* herein and shall include payments for (2) Supplemental Services performed, and (3) Reimbursable Expenses incurred.
- 4.3.3 If the Client disputes, in good faith, all or any portion of any statement from the Landscape Architect for Landscape Architectural Services or Reimbursable Expenses, the Client shall notify the Landscape Architect in writing within seven (7) days of receipt of the disputed statement, describing the nature of the dispute and including a reasonably detailed explanation of the reason for the dispute.
- 4.3.4 Payments are due and payable 30 days from the date of the Landscape Architect's invoice. Invoiced amounts unpaid 45 days after the invoice date shall be deemed overdue and shall accrue 5% simple interest per month. Pursuant to section 7.2, herein, at the Landscape Architect's option, overdue payments may be grounds for suspension of services or termination of this Agreement.

4.4. Extended Services

If through no fault of the Landscape Architect, the Scope Services described in section 1.4 of *Exhibit "B"* have not been completed within the term indicated in the Schedule of Services provided in *Exhibit "D,"* the compensation for services rendered after that time period shall be on the basis of the hourly rates provided in *Exhibit "C."*

**Article 5
Insurance, Indemnification, Consequential Damages**

5.1 Insurance

The Landscape Architect shall secure and maintain insurance coverages indicated as follows:

Coverage	<u>Liability Limits</u>
Professional Liability	<u>\$1,000,000.00</u> per claim/annual aggregate
Commercial General Liability	per occurrence
Comprehensive Automobile Liability	per accident
Workers Compensation	statutory limits

5.2 Consequential Damages

The Landscape Architect waive consequential damages for claims, disputes, or other matters in question which arise out of or are related to this Agreement, including but not limited to consequential damages due to the termination of this Agreement by either party in accordance with the provisions of Article 7 hereof.

5.3 Client's Commercial General Liability Insurance

The Client agrees to name the Landscape Architect as an additional insured on its Commercial General Liability (CGL) insurance policy(ies), if any, applicable to the Project and provide the Landscape Architect with a Certificate of Insurance evidencing compliance.

5.4 Waiver of Subrogation

To the extent damages are covered and paid by property insurance during construction, the Client and the Landscape Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages. The Client and the Landscape Architect, respectively, shall require of their contractors, consultants, agents and

employees similar waivers in favor of the other parties enumerated herein.

5.5 Hazardous Materials Waiver

Unless otherwise provided in the Agreement, the Landscape Architect and the Landscape Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, polychlorinated biphenyl (PCB) or other toxic substances.

Article 6 Dispute Resolution

6.1 If a dispute arises out of or relates to this Agreement, the parties shall endeavor to resolve differences first through direct discussions between parties or their representatives who shall have authority to settle the dispute. If the dispute has not been settled within 14 days of initial discussions, the parties shall submit the dispute to mediation in accordance with section 6.2

6.2 If the dispute is not settled pursuant to section 6.1, before recourse to any other dispute resolution procedure, the parties shall endeavor to settle the dispute by mediation under the current Construction Industry Mediation Rules of the American Arbitration Association. The location of the mediation shall be at a place both parties agree. A request for mediation may be filed with the American Arbitration Association or any other mediation service acceptable to both parties. The parties agree to conclude the mediation within 60 days of filing the request. Unless otherwise agreed, the cost of mediation shall be shared equally by the parties.

6.3 For any claim subject to, but not resolved by, mediation pursuant to Section 6.2, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the parties do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved in a court of competent jurisdiction.)

- Arbitration pursuant to section 6.4 of this Agreement
 Litigation in a court of competent jurisdiction

6.4 Unless otherwise agreed in writing, the Landscape Architect agrees to continue to perform its services during any dispute resolution proceedings. If the Landscape Architect continues to perform, the Client shall continue to make payments in accordance with this Agreement for amounts not in dispute.

6.5 Appropriate provisions for consolidation shall be included in other contracts relating to the Project so that all parties necessary to resolving a claim can be made parties to the same dispute resolution proceeding.

6.6 Nothing in these provisions shall limit rights or remedies not expressly waived under applicable lien laws.

Article 7 Suspension/Termination

7.1 This Agreement may be terminated by either party on seven (7) days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, provided the defaulting party has not cured or in good faith diligently commenced to cure the breach during the 7-day notice period.

7.2 The Client's failure to make payments to the Landscape Architect in accordance with the provisions of this Agreement shall be deemed a substantial failure to perform and

a cause for termination; however, in this circumstance the Landscape Architect, at its option, may elect to suspend its services on seven (7) days' written notice to the Client. The Landscape Architect shall have no liability to the Client for any delays caused by a suspension under this provision.

7.3 If the Client suspends the Landscape Architect's services for any reason, the Landscape Architect shall be compensated for all Landscape Architectural Services performed to that date, and the Landscape Architect shall have no liability to the Client for any delays caused by the Client's decision to suspend the Services.

7.4 When suspended Services are resumed, the Landscape Architect shall be compensated for expenses incurred due to the interruption and resumption of the Landscape Architectural Services, and the Compensation and the Schedule of Services for the Services remaining to be performed shall be equitably adjusted.

7.5 A suspension of Services by either party for more than thirty (30) days may, at the Landscape Architect's option, be deemed grounds for termination of the Agreement.

7.6 If termination is not due to the fault of the Landscape Architect, the Client shall pay, in addition to Compensation and Reimbursable Expenses due at the time of the termination, all actual costs and expenses reasonably incurred by the Landscape Architect in connection with such termination. In addition, the Client shall comply and cooperate in accordance with the provisions of Article 3, Ownership of Documents.

7.7 The Client may terminate this Agreement for convenience and without cause with seven (7) days' written notice to the Landscape Architect providing, in addition to the Compensation, Reimbursable Expenses, and compliance with the Ownership of Documents provisions indicated in section 7.6, above, the Client pays to the Landscape Architect an amount representing the anticipated profit on the Scope of Services not performed under this Agreement because of the Client's decision to terminate for its convenience.

Article 8

Other Terms and Conditions

8.1 Force Majeure

Either party, as applicable, shall be relieved of its obligations hereunder in the event and to the extent that performance hereunder is delayed or prevented by any cause beyond its control and not caused by the party claiming relief hereunder, including, without limitation, acts of God, public enemies, war, insurrection, acts or orders of governmental authorities, fire, flood, explosion, or the recovery from such cause ("Force Majeure"). The parties agree to make all reasonable efforts to mitigate the delays and damages of Force Majeure.

8.2 Notices

Notices required pursuant to this Agreement shall be sufficient if delivered personally or by registered or certified mail, return receipt requested, at the addresses indicated on the first page of this Agreement.

8.3 Assignment

Neither party shall assign their interest in this Agreement without the express written consent of the other, except as to the assignment of proceeds.

8.4 Third Party Relationships

Nothing in this Agreement shall create a contractual relationship with, an obligation to, or a cause of action in favor of, any third party against either the Client or the Landscape Architect.

8.5 Severability

If any term or provision of this Agreement shall be found to be invalid or unenforceable, the remaining provisions shall, to the fullest extent permitted by law, remain in full force and effect.

8.6 Captions

Captions of articles, sections, paragraphs, or subparagraphs of this Agreement are for convenience and reference only.

8.7 Governing Law

This Agreement shall be governed by the law of the State of Mississippi.

8.8 Complete Agreement

This Agreement represents the entire understanding between the Client and the Landscape Architect and supersedes all prior negotiations, representations, or agreements, whether written or oral with respect to its subject matter. The person(s) signing this Agreement on behalf of the parties hereby individually warrant that they have full legal power to execute this Agreement on behalf of the respective parties and to bind and obligate the parties with respect to all provisions contained herein. This Agreement only may be amended in writing signed by both the Client and the Landscape Architect.

8.9 Limitations Period

As between the parties to the Agreement: as to all acts or failures to act by either party to the Agreement, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the completion of Services under the Agreement.

Exhibits

The following Exhibits are incorporated in and made a part of this Agreement:

"A" Scope of Services and Supplemental Services

"B" Landscape Architect's Hourly Compensation Rates Schedule

Landscape Architect Date

Client Date

EXHIBIT "A"
SCOPE OF SERVICES
AND SUPPLEMENTAL SERVICES

1.4 Scope of Services

1.4.1 Bidding Phase

When contracts are bid, the Landscape Architect shall assist the Client during the bidding process to identify the Contractor to construct the Project and establish the firm price to accomplish the work. The Landscape Architect shall:

- .1 coordinate the schedule for bid advertising, pre-bid conference, addenda (if applicable), and bid opening
- .2 prepare and organize bid solicitation and proposal forms consistent with the Client's requirements
- .3 arrange for printing and distribution of the bid documents
- .4 conduct the pre-bid conference and document the proceedings
- .5 clarify the Construction Documents as required through the preparation and issuance of addenda
- .6 attend the bid opening
- .7 review bids including alternates and formulate a recommendation on the award of the contract

1.4.2 Contract Negotiation Phase

When contracts are negotiated, the Landscape Architect shall assist the Client during the contract negotiation process to establish contract terms for the construction of the Project. The Landscape Architect shall:

- .1 arrange for transmittal of Construction Documents to the selected Contractor
- .2 meet with the selected Contractor to review the Construction Documents and the proposed improvements
- .3 provide clarification to the Construction Documents as reasonably required
- .4 review the selected Contractor's proposal and formulate a recommendation on the award of the contract

1.4.3 Construction Contract Administration Services

The Landscape Architect shall provide the following administration services associated with the construction of the Project:

- .1 take part in the pre-construction conference.
- .2 undertake to observe the work in progress at intervals appropriate to the stage of construction for conformance with Construction Documents
- .3 review and take appropriate action on materials and equipment submitted by the Contractor for approval
- .4 review and take appropriate action on shop drawings and change order requests submitted for approval
- .5 on behalf of the Client, receive and forward to the Client written guarantees, warranties, releases of liens, and related documents required from the Contractor
- .6 conduct observations to determine final completion and acceptance of the work
- .7 determine consent of surety, if any, to issuance of a final certificate of payment
- .8 evaluate the completed work to determine acceptance or non-acceptance based on conformity with the Construction Documents
- .9 review and approve Contractor progress applications for payment
- .10 review and approve a final application for payment and recommend acceptance of the Project by the Client

1.5 Supplemental Services

1.5.1 Pre-design Services

The following pre-design services shall be considered Supplemental Services:

- .1 assisting the Client with programming
- .2 assisting the Client with marketing and/or feasibility studies
- .3 master planning
- .4 detailed project scheduling (critical path, milestone completion dates, or other methods)
- .5 representing the Client at zoning hearings and/or community meetings or design review hearings

1.5.2 Design Phase Supplemental Services

Unless otherwise agreed to by the parties, the following are Supplemental Services:

- .1 scale models and renderings
- .2 special studies or reports
- .3 life cycle cost analyses
- .4 expert witness testimony
- .5 attendance at litigation or arbitration proceedings when the Landscape Architect is not a party
- .6 long-distance travel to inspect materials and equipment of potential suppliers
- .7 permitting services beyond those described in section 1.4

- .8 attendance at public review or design review hearings

1.5.3 Construction Contract Administration Supplemental Services

The Landscape Architect shall provide the following administration services associated with the construction of the Project as Supplemental Services. When requested, the Landscape Architect shall:

- .1 prepare Client-initiated change orders
- .2 review the Contractor's marked-up "as-built" drawings

Revisions to previously approved drawings or other documents shall constitute Supplemental Services when necessary to accommodate subsequent interpretations by governmental officials.

1.5.4 Post-Construction Services

The following Post-Construction Services are Supplemental Services. When requested by the Client, the Landscape Architect shall:

- .1 prepare record drawings of the actual construction based on marked-up drawings and other data furnished by the Contractor
- .2 provide observations of work and/or warranty items at appropriate times
- .3 perform post-construction evaluation of functional and operational performance of the Project

EXHIBIT "B"
LANDSCAPE ARCHITECT'S
HOURLY COMPENSATION RATES SCHEDULE

(Landscape Architect inserts Landscape Architect's Hourly Compensation Rates Schedule
as Exhibit "B")

Registered Professional (Landscape Architect)	\$125.00
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