

# CITY OF SANTA FE

## "REQUEST FOR PROPOSALS"

**CIP# 474C- LANDSCAPE ARCHITECT DESIGN SERVICES  
SOUTHWEST ACTIVITY NODE (SWAN) PARK PHASE 2**

**RFP # '16/29/P**



**PROPOSALS DUE:**

**March 24, 2016**

**2:00 P.M.**

**PURCHASING OFFICE CITY OF SANTA FE**

**2651 SIRINGO ROAD, BUILDING "H"**

**SANTA FE, NEW MEXICO 87505**

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### Exhibits:

1. SWAN Park Illustrative Master Plan
2. SWAN Park Phase 2 Area
3. SWAN Park Phase 1 Site Plan
4. Boilerplate Agreement between Owner and Landscape Architect
5. City of Santa Fe Living Wage summary

- The complete Request for Proposal can be accessed on the City of Santa Fe's Web Page [www.santafenm.gov](http://www.santafenm.gov); pull down menu under "BUSINESS", select Bids and RFPs.

**REQUEST FOR PROPOSALS  
PROPOSAL NUMBER '16/29/P**

Proposals will be received by the City of Santa Fe and shall be delivered to the City of Santa Fe Purchasing Office, 2651 Siringo Road Building "H" Santa Fe, New Mexico 87505 **until 2:00 P.M. local prevailing time, March 24, 2016**. Any proposal received after this deadline will not be considered. This proposal is for the purpose of procuring professional services for the following:

**LANDSCAPE ARCHITECT DESIGN SERVICES  
SWAN PARK PHASE 2**

The proponent's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the proposal throughout, and they will be deemed to be included in the proposal document the same as though herein written out in full.

The City of Santa Fe is an Equal Opportunity Employer and all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation or national origin. The successful proponent will be required to conform to the Equal Opportunity Employment.

Proposals may be held for sixty (60) days subject to action by the City. The City reserves the right to reject any or all proposals in part or in whole. Proposal packets are available by contacting: Mary MacDonald, City of Santa Fe, Facilities Division, 2651 Siringo Rd., Bldg. E, Santa Fe, New Mexico, 87505, (505) 955-5934.

  
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Robert Rodarte, Purchasing Director,

Received by the Santa Fe New Mexican Newspaper on: 02/15/16  
To be published on: 02/19/16

Received by the Albuquerque Journal Newspaper on: 02/15/16  
To be published on: 02/19/16

## PROPOSAL SCHEDULE

### RFP # '16/29/ P

- |     |                                                   |                                                                                                                                                               |
|-----|---------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.  | Advertisement                                     | February 19, 2016                                                                                                                                             |
| 2.  | Issuance of RFP'S                                 | February 19, 2016                                                                                                                                             |
| 3.  | Pre-proposal Meeting                              | March 3, 2016<br>3:00 p.m..<br>Conference Room at<br>Facilities Division<br>2651 Siringo Rd., Bldg. E,<br>Santa Fe, NM 87505                                  |
| 4.  | Receipt of proposals                              | March 24, 2016, 2016<br>2:00 p.m. local prevailing time.<br>Purchasing Office 2651<br>Siringo Road Bldg., "H"<br>Santa Fe, New Mexico<br>87505 (505) 955-5711 |
| 5.  | Evaluation of proposals                           | April 1, 2016                                                                                                                                                 |
| 6.  | Short List Interviews                             | April 11, 2016                                                                                                                                                |
| 7.  | Fee/Schedule Negotiation                          | April 13, 2016                                                                                                                                                |
| 8.  | Recommendation of award<br>Public Works Committee | April 25, 2016                                                                                                                                                |
| 9.  | Recommendation of award<br>to Finance Committee   | May 2, 2016                                                                                                                                                   |
| 10. | Recommendation of award<br>to City Council        | May 11, 2016                                                                                                                                                  |

**DATES OF CONSIDERATION BY PUBLIC WORKS COMMITTEE, FINANCE COMMITTEE AND CITY COUNCIL ARE TENTATIVE AND SUBJECT TO CHANGE WITHOUT NOTICE.**

## **INFORMATION FOR PROPONENTS**

### **1. RECEIPT OF PROPOSALS**

The City of Santa Fe (herein called "City"), invites firms to submit seven copies of the proposal. Proposals will be received by the Purchasing Office, until 2:00 p.m. local prevailing time, March 24, 2016.

The packets shall be submitted and addressed to the Purchasing Office, at 2651 Siringo Road Bldg. "H" Santa Fe, New Mexico 87505. No late proposals will be accepted whether hand delivered, mailed or special delivery. Do not rely on "overnight delivery" without including some lead-time. "Overnight delivery" will be determined to be non-responsive if delivered late, no matter whose fault it was. It is recommended that extra days be included in the anticipated delivery date to ensure delivery is timely. The Purchasing Office is closed 12:00 p.m. to 1:00 p.m. The outside of the envelope should clearly indicate the following information:

Proposal number: '16/29/P

Title of the proposal: Landscape Architect Design Services –  
SWAN Park Phase 2

Name and address of the proponent:

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Any proposal received after the time and date specified shall not be considered. No proposing firm may withdraw a proposal within 60 days after the actual date of the opening thereof.

### **2. PREPARATION OF PROPOSAL**

Vendors shall comply with all instructions and provide all the information requested. Failure to do so may disqualify your proposal. All information shall be given in ink or typewritten. Any corrections shall be initialed in ink by the person signing the proposal.

This request for proposal may be canceled or any and all proposals may be rejected in whole or in part, whenever the City of Santa Fe determines it is in the best interest of the city.

### **3. ADDENDA AND INTERPRETATIONS**

No oral interpretation of the meaning of any section of the proposal documents will be binding. Oral communications are permitted in order to make an assessment of the need for an addendum. Any questions concerning the proposal must be addressed prior to the date set for receipt of proposal.

Every request for such interpretations shall be in writing addressed to, Purchasing Officer, 2651 Siringo Road Bldg. "H" Santa Fe, New Mexico, 87505 and to be given consideration must be received at least (5) days prior to the date set for the receiving of proposals.

Any and all such interpretations and any supplemental instruction will be in the form of written addenda to the RFP, which if issued, will be delivered to all prospective firms not later than three days prior to the date fixed for the receipt of the proposals. Failure of any proposing firm to receive any such addenda or interpretations shall not relieve such firm from any obligation under their proposal as submitted. All addenda so issued shall become part of the contract documents.

The City reserves the right to not comply with these time frames if a critical addendum is required or if the proposal deadline needs to be extended due to a critical reason in the best interest of the City of Santa Fe.

**4. LAWS AND REGULATIONS**

The proposing firm's attention is directed to the fact that all applicable Federal Laws, State Laws, Municipal Ordinances, and the rules and regulations of all authorities having jurisdiction over said item shall apply to the contract throughout. They will be deemed to be included in the contract the same as though herein written out in full.

**5. METHOD OF AWARD**

The proposal is to be awarded based on qualified proposals as per the enclosed rating system and at the discretion and consideration of the governing body of the City of Santa Fe. The selection committee may interview the top three rated proponents; however, contracts may be awarded without such interviews. At its discretion the City reserves the right to alter the membership or size of the selection committee. The City reserves the right to change the number of firms interviewed.

**6. COMPLIANCE WITH CITY'S MINIMUM WAGE RATE ORDINANCE (LIVING WAGE ORDINANCE)**

A summary of the City of Santa Fe Ordinance No. 2003-8, passed by the Santa Fe City Council on February 26, 2003 is attached (Exhibit 5). The proponent or bidder will be required to submit the proposal or bid such that it complies with the ordinance to the extent applicable. The recommended Contractor will be required to comply with the ordinance to the extent applicable, as well as any subsequent changes to the Ordinance throughout the term of this contract.

**7. RESIDENT and LOCAL PREFERENCE and NEW MEXICO RESIDENT VETERANS PREFERENCE**  
RESIDENT and LOCAL PREFERENCE INTENT AND POLICY

The City recognizes that the intent of the state resident preference statute is to give New Mexico businesses and contractors an advantage over those businesses, manufacturers and contractors from outside the State of New Mexico. The underlying policy is to give a preference to those persons and companies who contribute to the economy of the State of New Mexico by maintaining businesses and other facilities within the state and giving employment to residents of the state (1969 OP. Att'y Gen. No. 69-42). The City also has adopted a policy to include a local preference to those persons and companies who contribute to the economy of the County of Santa Fe by maintaining businesses and other facilities within the county and giving employment to residents of the county.

### APPLICATION-IN-STATE AND OUT OF STATE BIDDERS

With acknowledgment of this intent and policy, the preference will only be applied when bids are received from in-state and county businesses, manufacturers and contractors that are within 5% of low bids received from out-of-state businesses, manufacturers and contractors (13-1-21 (A) -1-21 (F) and 13-4-2 (C) NMSA 1978). To be considered a resident for application of the preference, the in-state bidder must have included a valid state purchasing certification number with the submitted bid.

Thus it is recommended that in-state bidders obtain a state purchasing certification number and use it on all bids, in order to have the preference applied to their advantage, in the event an out-of-state bid is submitted. In submitting a bid, it should never be assumed that an out-of-state bid will not be submitted. For information on obtaining a state purchasing certification number, the potential bidder should contact the State of New Mexico Taxation and Revenue Department.

All resident preferences shall be verified through the State Purchasing Office. Applications for resident preference not confirmed by the State Purchasing Office will be rejected. The certification must be under the bidder's business name submitting the bid.

### NON-APPLICATION-COMPETING IN-STATE BIDDERS

If the lowest responsive bid and the next responsive bids within 10% of the lowest bid, are all from the State of New Mexico, then the resident preference will not be applied and the state purchasing certification number will not be considered. To be considered an in-state bidder in this situation, the bidders must meet the definition criteria of Chapter 13-1-21 (A)(1) and Chapter 13-4-2 (A) NMSA 1978. After examining the information included in the bid submitted, the city Purchasing Director may seek additional information of proof to verify that the business is a valid New Mexico business.

If it is determined by the city Purchasing Director that the information is not factual and the low responsive bid is actually an out-of-state bidder and not a New Mexico business, then the procedures in the previous section may be applied. If the bidder has met the above criteria, the low responsive "resident" bid shall be multiplied by .95. If that amount is then lower than the low responsive bid of a "non-resident" bidder, the award will be based taking into consideration the resident preference of 5%.

### APPLICATION FOR LOCAL PREFERENCE

For the purposes of this section, the terms resident business and resident manufacturer shall be defined as set out in Section 13-1-21 NMSA 1978; the term local as applied to a business or manufacturer shall mean:

The PREFERENCE FACTOR for resident and local preferences applied to bids shall be .95 for resident and .90 for local. The local preference for proposals shall be 1.10.

**Bids for Goods and Services.** When bids for the purchase of goods or services pursuant to Section 22 are received, the lowest responsive bid received from those bidders in the first category listed below shall be multiplied by the Preference Factor. If the resulting price of that bid receiving the preference is lower than or equal to the lowest bid of all bids received, the contract shall be awarded to that bidder receiving the preference. If no bids are received from bidders in the first category, or if the bid receiving the preference does not qualify for an award after multiplication by the Preference Factor, the same procedure shall be followed with respect to the next category of bidders listed to determine if the bid qualifies for award. The priority of categories of bidders is:

- (1) Local business.
- (2) Resident business.

**Proposals for Goods and Services.** When proposals for the purchase of goods or services pursuant to Section 23 are received, the evaluation score of the proposal receiving the highest score of all proposals from those proponents in the first category listed above shall be multiplied by the Preference Factor. If the resulting score of that proposal receiving the preference is higher than or equal to the highest score of all proposals received, the contract shall be recommended to that proponent receiving the preference. If no proposals are received from proponents in the first category, or if the proposal receiving the preference does not qualify for an award after multiplication by the Preference Factor, the same procedure shall be followed with respect to the next category of proposals listed to determine if a proponent qualifies for award.

**Qualifications for Resident Preference.** No resident business or manufacturer, as defined, shall be given any preference in the awarding of contracts for furnishing goods or services to the city, unless it shall have qualified with the State Purchasing Agent as a resident business or manufacturer and obtained a

certification number as provided in Section 13-1-22 NMSA 1978. The certification number must be submitted with its bid for an offeror to qualify for this preference. The Central Purchasing Office shall determine if a resident preference is applicable to a particular offer on a case by case basis.

Qualifications for Local Preference. The Central Purchasing Office shall have available a form to be completed by all bidders/proponents who desire to apply for the local preference as a local business. The completed form with the information certified by the offeror must be submitted by the bidders/proponents with their bid or proposal to qualify for this preference.

Limitation. No offeror shall receive more than 10% for local preference pursuant to this section on any one offer submitted. A bidder may not claim cumulative preferences.

Application. This section shall not apply to any purchase of goods or services when the expenditure of federal and/or state funds designated for a specific purchase is involved and the award requirements of the funding prohibit resident and/or local preference(s). This shall be determined in writing by the department with the grant requirements attached to the Purchasing Office before the bid or request for proposals is issued.

Exception. The City Council at their discretion can approve waiving the Local Preference requirements for specific projects or on a case by case basis if it is the City's best interest to do so.

**New Mexico Resident Preference Number (if applicable):**

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**NEW MEXICO RESIDENT VETERANS BUSINESS PREFERENCE**

New Mexico law, Section 13-1-22 NMSA 1978, provides a preference in the award of a public works contract for a "resident veteran business." Certification by the NM Department of Taxation and Revenue for the resident veteran business requires the Offeror to provide evidence of annual revenue and other evidence of veteran status.

An Offeror who wants the veteran business preference to be applied to its proposal is required to submit with its proposal the certification from the NM Department of Taxation and Revenue and the sworn affidavit.

If an Offeror submits with its proposal a copy of a valid and current veteran resident business certificate, 7%, 8%, or 10% of the total weight of all the evaluation factors used in the evaluation of proposal may be awarded.

The local preference or resident business preference is not cumulative with the resident veteran business.

## **8. PROTESTS AND RESOLUTIONS PROCEDURES**

Any proponent, offeror, or contractor who is aggrieved in connection with a procurement may protest to the Purchasing Officer. The protest must be in writing and submitted within fifteen (15) days of the City's final evaluation. Requirements regarding protest and resolution of protests are available from the Purchasing Office upon request.

## **SPECIAL CONDITIONS**

### **1. GENERAL**

When the City's Purchasing Officer issues a purchase order document in response to the vendor's bid, a binding contract is created.

### **2. ASSIGNMENT**

Neither the order, nor any interest therein, nor claim under, shall be assigned or transferred by the vendor, except as expressly authorized in writing by the City Purchasing Officer's Office. No such consent shall relieve the vendor from its obligations and liabilities under this order.

### **3. VARIATION IN SCOPE OF WORK**

No increase in the scope of work of services or equipment after award will be accepted, unless means were provided for within the contract documents. Decreases in the scope of work of services or equipment can be made upon request by the city or if such variation has been caused by documented conditions beyond the vendor's control, and then only to the extent, as specified elsewhere in the contract documents.

### **4. DISCOUNTS**

Any applicable discounts should be included in computing the bid submitted. Every effort will be made to process payments within 21 days of satisfactory receipt of goods or services. The City Purchasing Officer shall be the final determiner of satisfactory receipt of goods or services.

### **5. TAXES**

The price shall include all taxes applicable. The City is exempt from gross receipts tax on tangible personal property. A tax exempt certificate will be issued upon written request.

### **6. INVOICING**

(A) The vendor's invoice shall be submitted in duplicate and shall contain the following information: invoice number and date, the purchase order number,

description of the supplies or services, quantities, unit prices and extended totals. Separate invoices shall be submitted for each and every complete order.

- (B) Invoices must be submitted to Facilities Division and NOT the City Purchasing Agent or Accounts Payable.

**7. METHOD OF PAYMENT**

Every effort will be made to process payments within 21 days of receipt of detailed invoice and proof of delivery and acceptance of the products hereby contracted, or as otherwise specified in the compensation portion of the contract documents.

**8. DEFAULT**

The City reserves the right to cancel all or any part of this order without cost to the City if the vendor fails to meet the provisions for this order, and except as otherwise provided herein, to hold the vendor liable for any excess cost occasioned by the City due to the vendor's default. The vendor shall not be liable for any excess cost if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Vendor and these causes have been made known to the City of Santa Fe in written form within five working days of the vendor becoming aware of a cause which may create any delay; such causes include, but are not limited to, acts of God or the public enemy, acts of the State or of the Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of sub-contractors due to any of the above, unless the City shall determine that the suppliers or services to be furnished by the sub-contractor are obtainable from other sources in sufficient time to permit the vendor to meet the required delivery schedule. The rights and remedies of the City are not limited to those provided for in this paragraph and are in addition to any other rights provided for by law.

**9. NON-DISCRIMINATION**

By signing this City of Santa Fe bid or proposal, the vendor agrees to comply with the Presidents Executive Order No. 11246 as amended. (<http://www.dol.gov/ofccp/regs/statutes/eo11246.htm>)

**10. NON-COLLUSION**

In signing this bid or proposal, the vendor certifies it has not, either directly or indirectly, entered into action in restraint of full competition in connection with this bid or proposal submittal to the City of Santa Fe.

## **SCOPE OF SERVICES**

### **'16/29/P**

#### **Introduction**

1. The City of Santa Fe's Facilities Division of the Public Works Department, is seeking the services of a qualified Landscape Architect design firm to provide the design for the second phase of SWAN Park. Phase 2 of the park is the design and construction of the middle area of the park shown on Exhibit 1, based on the park elements shown on the SWAN Park Master Plan, Exhibit 2. The park is located southeast of the intersection of Jaguar Drive and Plaza Central.

The western most section of the park (Phase 1) was constructed in 2014 and 2015; refer to Exhibit 3 for the site plan. An eight inch diameter potable water line was installed in Phase 1, but not tested. Supply for that line from Plaza Central will be provided by the developer paving Plaza Central in the future. The existing effluent pump was sized to supply all of SWAN Park.

The Arroyo Chamiso traverses the park area. The maximum allowable construction cost for Phase 2 is \$4,500,000. At this time, there are no funds available for construction, therefore the requested design services do not include construction phase services.

#### **Design Team**

2. Landscape Architect design firms will propose a design team that includes engineers with experience in larger, active parks design and in designing sanitary sewer lift stations. The proposed team will include an architect, structural, utility and drainage engineers, and an environmental evaluation consultant. SWAN Park has archaeological clearance. The landscape architect will have extensive experience in designing large parks and commercial landscaping design for high desert elevation and climate.

#### **Scope of Work**

3. The design work includes programming, a public meeting after City staff completes review of the program report, design development, construction design, a public meeting at the time of the 90% construction design, and preparation of the Request For Bid/Project Manual. If construction funding has not become available when the final plans and specifications are complete, the RFB/Project Manual development will be deleted from the scope of work. The design of the park should include extending the park road, extending the existing electrical and potable water utilities, drainage design, landscaping, an effluent irrigation system, pedestrian paths, drinking fountains, park furnishings, a modular restroom building, a park maintenance/storage shop, a parking lot, community garden, fruit orchard, perimeter fencing, a sanitary sewer lift station, and all the recreational elements shown on the Master Plan for this Phase 2 area, with the following exceptions, modifications, clarifications and additions:

- a) Evaluate the need for drainage improvements to the Arroyo Chamiso to minimize erosion along both sides and prevent scouring through the Phase 2 park area.

- b) Construct the disc golf holes shown on the north side of the park road on Exhibit 1.
  - c) Construct a paved turn around at the east end of the park road extension for emergency vehicles and school buses.
  - d) Design a small fruit tree orchard on the north side of the park road extension.
  - e) The community garden will be fenced and gated, with a separately metered frost free potable water hose bib.
  - f) The number of horseshoe pits and tennis/pickleball courts shall be as shown on the master plan.
  - g) Delete the concession building; provide concrete surfaced spaces for food trucks and a covered outdoor space for a few vending machines.
  - h) Recommend a modular restroom building, or a large shade structure (for the picnic tables) combined with a restroom building, that is affordable, easily maintained, vandal resistant, and time tested in parks by other cities. Look first at CXT Inc. buildings (available to the City through an NJPA contract) for the modular restroom building and at RCP Shelters for the combo shade structure/restroom building. Design support systems/surfaces not included with modular buildings. Buildings should have positive ventilation but will not be heated (not used in winter). A frost free hose bib should be located adjacent to the shade structure.
  - i) The community lawn should include a shaded picnic tables space.
  - j) The pressurized line from the sanitary sewer lift station should be routed to the manhole in the cul-de-sac at the end of the west Sereno Loop. The system should be sized to accommodate future restrooms in the southeast and eastern ends of the park.
  - k) The two sided maintenance/equipment storage building; it should have 110 V double outlets, energy efficient lighting, positive ventilation, and two rollup doors, one for each side, on opposite sides of the building. This building will not be heated. Research and recommend modular building options. The two sides would be separated by a solid wall; one side would serve Parks maintenance and the other side would be for a small Police substation with storage for an ATV. The Parks side would have a utility sink and an eye wash station, and a frost free hose bib adjacent to the standard door entry.
  - l) The Arroyo Chamiso Trail segment in Phase 2 and Phase 1 area should be included in this design
  - m) The future single lane access road to the Festival Lawn should be stubbed out from the park road to the south side of the Arroyo Chamiso Trail.
  - n) Specify irrigation system materials to match what was installed in Phase 1 to simplify maintenance and spare parts storage.
  - o) The water play feature shown on Exhibit 1 shall be recirculating.
4. The design scope of work also includes, but is not limited to:
- a) Coordinate with the City Engineer to obtain the most current FEMA flood plain maps
  - b) Provide an environmental survey and report and apply for a LOMA.

- c) Perform geological testing and provide a report..
- d) Coordinate with various public agencies to ascertain the anticipated work to obtain the required permits, and the cost of applying for these permits.
- e) Provide a preliminary opinion of construction cost with the program report and a detailed construction cost estimate with the schematic design submittal
- f) Park furnishings should include bicycle racks, trash and recycling receptacles, benches, and picnic tables. Park furnishings should match existing furnishings in Phase 1 area as closely as possible.
- g) Communicate and coordinate with City staff from various departments as required to obtain necessary information.

### **For the Program Schematic and Construction Documents Design Phases**

5. The Landscape Architect shall be responsible for:

- a) Scheduling all design reviews and other meetings
- b) Writing design review reports
- c) Writing design team meeting reports (minutes)
- d) Distributing all reports, plans and documents
- e) Providing monthly progress reports for design, utilities, environmental, and construction
- f) Providing periodic progress presentations to City management and committees, and local elected officials (i.e. Parks & Recreation Department Director, City Council, City Committees, Parks & Recreation Committee, MPO, etc.)
- g) Public Involvement – Public Meetings:

The Landscape Architect shall be responsible for support of up to two public meetings, including the cost for required recording equipment, responding to agency and public comments; preparation of handouts, exhibits and displays; presentation at the meeting, preparation of sign-in sheets and forms for written comment; preparation of transcripts of the recordings. The City will provide an appropriate venue for the meetings, and advertise and chair the meetings.

### **Detailed Scope of Work for Design Phases:**

6. PHASE I – PROGRAMMING

a) The Landscape Architect will develop a comprehensive program which establishes goals, collects facts, identifies concepts and establishes design criteria to meet the needs of the project. The program report will explain the elements in the scope of work that differ from the SWAN Park Master Plan. The program should reflect the information and requirements of this request for proposals and determine the current project requirements. The program report will make recommendations about what work should be deleted or deferred if the preliminary opinion of cost exceeds the

maximum allowable construction cost (\$4,500,000.) The deliverable will be the program report.

b) **Coordination:** In both phases of the design work, the Landscape Architect will be responsible for all coordination necessary to accomplish the work required by the contract. This responsibility shall include coordination with permitting public agencies, the City (all departments/divisions/committees as required), PNM, and other agencies having jurisdiction, management responsibilities, sensitive resource responsibilities, permit authority or interest in the project (ex. MPO and CID). This will include obtaining approvals and/or concurrence on all work that is to be completed by the Landscape Architect including work completed by sub-consultants working under this contract.

c) This responsibility shall also include obtaining all formal and informal approvals. For any required formal (written) approvals, the Landscape Architect will provide the City with all required data and draft/final draft letters of transmittal. In the event the Landscape Architect is not successful in obtaining formal or informal approvals, the Landscape Architect shall promptly notify the City in writing, and the City will assist in resolving the matter.

d) In addition to the above, the Landscape Architect shall be responsible for:

- Writing design team meeting reports (minutes)
- Distributing all reports, plans and documents
- Providing monthly progress reports for design, utilities, and construction

e) Quality Assurance

In the Program and Schematic design phases, the City expects an excellent quality assurance effort. The City expects the proposing Landscape Architect to thoroughly review all sub-consultant's reports, plans and specifications, prior to submittal to the City. The City reserves the right to reject submittals that show a lack of quality control. Should the City reject submittals for this reason, the City will not be charged for reproduction costs of the follow up submittal. The City will not provide an extensive review of plans, however, if the City must do so, it will back charge the Landscape Architect its actual costs. Errors and omissions will be the responsibility of the Landscape Architect. Consultants will not be liable for errors or omissions in owner furnished data.

f) Design Kick Off Meeting

The Landscape Architect's key design team members will initially meet with City staff for a design kickoff meeting

g) Environmental Survey and Documentation

The City will arrange and pay for a prairie dog survey and for mitigation, if it is required. The following outlines tasks that may be required of the Landscape Architect are:

- Review the most recent list of federal endangered and threatened species in Santa Fe County to determine the potential presence of any listed species in the project vicinity, as required under the Endangered Species Act.
- Conduct a biological survey and prepare a biological survey memorandum.
- Apply for a LOMA

The Landscape Architect will perform the investigations based on the current requirements of City, State and Federal regulations.

g) Location Survey & Mapping

1. The Landscape Architect shall provide a location survey to include location of fences, structures, and above ground utilities (i.e. manholes, pull boxes, etc.) that could conflict with proposed improvements should be identified. Use of City GIS ortho-photography in conjunction with the location survey is acceptable. All surveying shall be performed under the direct supervision of a New Mexico Registered Professional Land Surveyor and conform with the Minimum Standards for Surveying in New Mexico adopted by the New Mexico Board of Registration for Professional Engineers and Surveyors.

2. The Landscape Architect, having obtained all the necessary records and survey field data, will show all pertinent survey data and information (i.e. existing right-of-way limits, property lines, monuments, structures, etc.) and tie to existing or set monuments on or near the project area. Survey information shall be prepared at the same scale as the planimetric P&P sheets and shown on these sheets.

h) First Opinion of Cost

The Landscape Architect shall include a first opinion of probable construction cost in the program report.

**The Landscape Architect shall receive written approval of the program report from the City prior to proceeding with the Schematic Design services.**

7. PHASE II – SCHEMATIC DESIGN

a) Project Utilities

After identifying existing above ground and subsurface utility locations the Landscape Architect shall map utility locations onto plans and profile sheets and aerial photographs.

b) Drainage Analysis & Permit

1. A drainage engineering analysis and design

2. The Landscape Architect shall prepare a storm water pollution prevention plan (SWPPP). The Landscape Architect shall also prepare temporary erosion and sediment control plans (TESCP). Additional information regarding the SWPPP and TESCP may be available from the NMDOT Drainage Section.

c) Geotechnical Sampling & Testing

The Landscape Architect will have geotechnical sampling & testing done, followed by a Geotechnical Report. The Geotechnical Report will be submitted as part of the Schematic Design. This may include, but is not limited to, soil sampling and laboratory testing sufficient to assemble construction details.

d) Schematic Design Plans

1. Using the approved Program Report, the Landscape Architect shall prepare Schematic Design drawings and documents, describing the general construction and immediate surroundings layout, probable utilities systems, storm water drainage systems, types of materials envisioned a breakdown of the budget on current area, volume or other unit costs, and the approximate dimensions of the programmed areas.

2. The schematic design plans may include: lighting design details, geometrics, plan and profile sheets showing recommended horizontal and vertical alignment of the access roads, typical sections, drainage requirements, slope limits, utility relocation/adjustment requirements, preliminary earthwork analysis, structure requirements such as retaining walls, a grading plan, and major drainage structures and a preliminary construction cost estimate by construction type. Project plans shall be prepared to the City's standards for general content and format, in an AutoCAD version 2013 or later.

3. Water conservation features shall be incorporated into the project, including features which go beyond the requirements of City code.

The Landscape Architect shall receive written approval of the schematic design plans, specifications and cost estimate from the City of Santa Fe prior to proceeding with the Schematic Design services.

8. PHASE 3 – CONSTRUCTION DOCUMENTS

a) 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 construct 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.

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

c) The Landscape Architect shall update the estimate for the Cost of the Work.

d) 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, and request the Owner's approval.

**If it is in the best interest of the Owner, when construction funding becomes available, construction phase services may be added to this agreement by amendment:**

All of the work defined in the "Scope of Services" will be included in the Agreement Between Owner and Landscape Architect.

## **SUBMITTAL REQUIREMENTS**

**'16/29/P**

### **A. SUBMITTAL PACKET**

1. Seven copies of the proposal packet shall be submitted. The packet should be as concise as possible.

### **2. PROPOSAL FORMAT**

For uniformity of review and evaluation of proposals, use the following format in preparing your proposal:

- A. Table of Contents
- B. General Work Plan Based on Scope of Work – Project Approach
- C. Project Team Description and Qualifications
- D. Experience / Past Performance
- E. Knowledge of Local Conditions
- F. Quality Assurance
- G. Resource Availability - Workload / Project Schedule
- H. Additional Pertinent Information
- I. Resumes
- J. Errors and Omissions Insurance Certificate
- K. Fee Proposal

Proposals must address all items listed in Sections A through G and I through K, above. Proposals that do not address these items will be considered non-responsive.

Proposal packets must be 8 ½" x 11" landscape or portrait format, limited to 30 single-sided pages for items A through I, excluding the covers, a cover letter, table of contents and separator sheets. The smallest acceptable pitch is 11 point with nominal 1" margins and normal line spacing.

The fee proposal, an estimate of manhours and fee estimate will be on the form included in this RFP on pg. 23. This estimate should detail the hours to be dedicated for each category. This submittal will be used as a basis for negotiation with the consultant who received the highest score.

### **B. GENERAL WORK PLAN BASED ON SCOPE OF WORK – PROJECT APPROACH**

A general work plan outlining the firm's approach to the scope of services. This plan should show a familiarity with the project site and a thorough understanding of the project scope. Demonstrate an understanding of the complexities and interrelationships among the different parts of the project. The description of the Landscape Architect's general work plan will be used to evaluate the proponents' level of understanding of the project scope and the amount of work to be performed by the prime consultant versus

sub-consultants. The general work plan should clearly show that the proposing prime consultant will be doing the majority of the design work.

### C. PROJECT TEAM DESCRIPTION AND QUALIFICATIONS

1. The qualifications of the firm for the type of work required. The ability and expertise of the proposing firm and sub-consultant firms necessary to work on this type of project should be clearly presented. Proposals shall provide responses to the following items to describe the proposing firm's organization, capabilities and specialities:

- a. Official Name of Business
- b. Types of services provided
- c. Legal information: Individual, partnership, corporation joint venture, or other  
. Names, titles, professional registration, addresses of firm owner, partners or officers.  
Categories in which firm is legally qualified to do business in New Mexico
- d. Firm Size – Describe the overall firm size and state the current number and type of regular full time employees in the office or facility that would be performing the work for this project, assisting the project team members. How long have these employees been with the firm?

2. Include the organizational chart for the project team, including sub-consultant members: provide the name of each team member, their position title, assigned tasks for this project, and percent of time they will be assigned to the project.

3. For each prime and sub-consultant member of the project team and other key personnel who will be assigned to the project, provide their type of license, certifications, their assigned tasks and the approximate percentage of project work that will be performed by each of these staff members.

4. The name and address of any proposed sub-consulting firms, and the identification of the tasks to be performed by them, and the names, type of license or certifications, and position title of the key personnel from each firm who will be assigned to this project.

5. More expanded information about the project team individuals, prime consultant and sub-consultant, can be included in the resumes section of the proposal.

6. The address, telephone and fax numbers of the office in which the majority of the work will be performed.

7. Describe the proposed project manager's experience in effectively working with and managing a combination of firms. Identify whether firms proposed for this project represent new joint venture associations, and describe previous associations with the proposed sub-consulting firms,

8. Should the firm be invited for personal interview, the city requires the principal and key project personnel who will be assigned to the project be present and introduced to the selection committee.

D. EXPERIENCE / PAST PERFORMANCE

Discuss recent (within the past six years) experience of the proposing firm and project team on projects similar in size and complexity to this project. List project name, location (city/state) project budget, consulting firms involved, prime consultant, the design completion dates in comparison to original schedule, construction estimate, construction bid cost, amount of change orders due to design error or omission as a percentage of construction cost, owner/client, and references contact(s), including current telephone number(s). Include a photograph of the completed project, if available. Describe your firm's expertise and familiarity with procedural, regulatory, and contract document requirements on projects of this scale, with and without Federal funding. Describe your firm's expertise in performing time-efficient, comprehensive reviews of submittals and requests for information during construction.

E. KNOWLEDGE OF LOCAL CONDITIONS

Describe knowledge and recent experience with local construction methods, conditions and seasonal requirements, and cost estimating in the general project area, i.e., Santa Fe Regional Area.

F. QUALITY ASSURANCE

Provide detailed internal quality control procedures for verification of all plans, specifications, and cost estimates, including quality assurance of the sub-consultants' designs.

G. RESOURCE AVAILABILITY – WORKLOAD / PROJECT SCHEDULE

1. Describe the proposing firm's workload for the period September 1, 2015 through January 31, 2016. Provide project names, locations, clients, current phase of work for each project, and schedule for each project. List those in your firm who are assigned to these projects that will also be assigned to the proposed project and the firm's capacity in these projects (i.e. subcontractor for structural design, landscape design, etc.).

Describe the sub-consultant project team members' workload at their firm for the above referenced time period, with the same details as listed in the previous paragraph.

The information provided for Resource Availability will be closely compared to the proposed project schedule.

2. PROJECT SCHEDULE

Include a bar graph project schedule for all phases of work through City acceptance of the construction documents and final plans. The schedule shall include the time necessary for the City review of work products. The schedule, which will become more detailed during negotiation, will be incorporated in the Agreement between Owner and Landscape Architect.

H. ADDITIONAL PERTINENT INFORMATION (if needed)

## I. RESUMES

For the sake of uniformity, submit the resumes of key members of the project team, including sub-consultant members, using the following format:

- Name and Title
- Specialized Professional Competence
- Education
- Years with Firm
- Current Responsibilities
- Representative Project Assignments with Firm
- Representative Project Assignments for Other Identified Employers
- Professional Background

## J. ERRORS AND OMISSIONS INSURANCE CERTIFICATE

All firms wishing to provide Landscape Architect design services on City projects must carry standard Errors and Omissions Insurance:

Professional Liability: Each claim \$1,000,000. Aggregate \$2,000,000.

No additional direct or reimbursable expense is allowed under the Agreement for this and other required insurance coverage, as specified in the included boilerplate agreement. Insurance certificates shall apply to prime consultants only and must be included with the proposal.

## EVALUATION CRITERIA AND WEIGHTED VALUES

PROJECT: SWAN Park Phase 2  
Landscape Architect Design Services RFP# '16/29/P

NAME OF LANDSCAPE ARCHITECT FIRM: \_\_\_\_\_

**EVALUATION CRITERIA:**

The consultant selection will be based upon evaluation of the proposal and the evaluation criteria.

Proposal Component	Weighted Value	Evaluation Points (1 = low, 10 = High)	Total Score	Max Score
Project Approach	15			150
Team Descriptions & Qualifications	15			150
Experience / Past Performance	20			200
Knowledge of Local Conditions:	10			100
Quality Assurance:	5			50
Resource Availability / Schedule:	5			50
<b>Quality of Proposal:</b> Is the proponent's knowledge and ability for this project clearly and concisely conveyed? Is all the required information included? Did the proponent follow the submittal requirements in the RFP?	15			150
Fee Proposal	15			150
<b>Total Score</b>				1000

Please do not minimize the importance of an adequate response in any area.

**SELECTION COMMITTEE EVALUATOR**

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

DEPARTMENT & DIVISION: \_\_\_\_\_

## **EVALUATION COMMITTEE MEMBERS**

The committee will consist of representatives from the following departments:

1. Finance Department
  - Purchasing Division
2. Parks & Recreation Department
3. Public Works Department
  - Facilities Division
  - Roadways & Trails Division

At its discretion, the City reserves the right to alter the membership and size of the committee.

Scores of the evaluation committee members will be totaled to determine the top rated firms.

Interviews, at the option of the City, will be scheduled for the top three rated firms, if deemed necessary. They will consist of a 30-minute presentation by the Proponent, and a 30-minute question and answer period. If interviews are conducted for the top three rated firms, those scores totaled from the evaluation committee members from the interview evaluations will determine the final top rated firm, unless other tangible extenuating circumstances are documented.

Unless noted elsewhere in this RFP, the same evaluation form will be used for the interview scores.

CITY OF SANTA FE, NEW MEXICO

FEE ESTIMATE				
LANDSCAPE ARCHITECT SERVICES				
1. NAME OF PROJECT: LANDSCAPE ARCHITECT DESIGN SERVICES / SWAN Park Phase 2 RFP # '16/29/P			2. CIP #: 474C	
3. NAME OF APPLICANT:			4. DATE OF PROPOSAL:	
5. ADDRESS OF APPLICANT		6. TYPE OF SERVICE TO BE FURNISHED:		
PART 2 – COST SUMMARY BASIC SERVICES				
7. DIRECT LABOR (specify categories)	ESTIMATED HOURS	HOURLY RATE	ESTIMATED COST	TOTALS
DIRECT LABOR TOTAL:				
8. OVERHEAD (specify cost pool)	RATE	X BASE	ESTIMATED COST	
OVERHEAD TOTAL:				
9. FEE OR PROFIT (show rate and base)				
SUPPLEMENTAL SERVICES				
10. SUBCONTRACTS (Identify & purpose)			ESTIMATED COST	
SUBCONTRACTOR TOTAL:				
11. SPECIAL EQUIPMENT	RATE	ESTIMATED HOURS	ESTIMATED COST	
EQUIPMENT TOTAL:				
N/A			ESTIMATED COST	
N/A			ESTIMATED COST	
SUBTOTAL ITEMS 7-11:				
14. GROSS RECEIPTS				
15. TOTAL PRICE				
16. SIGNATURE OF PREPARER	OWNER'S REVIEW BY		FACILITIES DIVISION	

## INSTRUCTIONS RELATING TO LOCAL PREFERENCE CERTIFICATION FORM

1. **All information must be provided.** A 10% local preference may be available for this procurement. To qualify for this preference, an offeror **must** complete and submit **the local preference certification form with its offer**. If an offer is received without the form attached, completed, notarized, and signed or if the form is received without the required information, the preference will not be applied. **The local preference form or a corrected form will not be accepted after the deadline for receipt of bids or proposals.**
2. **Local Preference precedence over State Preference.** The Local Preference takes precedence over the State Resident Preference and only one such preference will be applied to any one bid or proposal. If it is determined that the local preference applies to one or more offerors in any solicitation, the State Resident Preference will not be applied to any offers.
3. **Physical location must be stated.** The principal place of business of the enterprise is physically located within the Santa Fe County geographic boundaries. The business must have a “fixed office”, as defined by this title, located within Santa Fe County. Principal place of business must have been established no less than six months preceding application for certification. Post office box numbers shall not suffice to establish an enterprise as a local business.
4. **Subcontractors do not qualify.** Only the business, or if joint venture, one of the parties of the joint venture, which will actually be performing the services or providing the goods solicited by this request and will be responsible under any resulting contract will qualify for this preference. A subcontractor may not qualify on behalf of a prime contractor.
5. **Definition.** The following definition applies to this preference.

Fixed Office: shall mean a fixed and established place where work is carried on of a clerical, administrative, professional or production nature directly pertaining to the business being certified. A temporary location or movable property, or one that is established to oversee a City of Santa Fe project does not qualify as an office.

**Additional Documentation.** If requested a business will be required to provide, within 10 working days of the request, documentation to substantiate the information provided on the form. Any business which must be registered under state law, must be able to show that it is a business entity in good standing if so requested.

# LOCAL PREFERENCE CERTIFICATION FORM

RFP # '16/29/P

**IF APPLICABLE YOU MUST RETURN THIS FORM WITH YOUR PROPOSAL**

Business Name: \_\_\_\_\_

Business License Number: \_\_\_\_\_ (Attach copy of business license.)

Business Location (In Santa Fe County:)

Address: \_\_\_\_\_

City: \_\_\_\_\_

Zip Code: \_\_\_\_\_

County: \_\_\_\_\_

Business Type:

- Corporation – Indicate state of incorporation \_\_\_\_\_
- Partnership – Indicate “general” or “limited” \_\_\_\_\_
- Sole proprietorship \_\_\_\_\_

**CERTIFICATION:** I hereby certify under penalty of perjury that the information which I have provided on this form is true and correct, that I am authorized to sign on behalf of the business set out above and if requested by the city will provide, within 10 days of notice, the necessary documents to substantiate the information provided on this form.

By: \_\_\_\_\_ Authorized Representative: \_\_\_\_\_  
\_\_\_\_\_

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

Print Name

Subscribed and sworn before me by \_\_\_\_\_ this \_\_\_\_\_, day of \_\_\_\_\_,

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

SEAL

# RESIDENT VETERANS PREFERENCE CERTIFICATION

\_\_\_\_\_ (NAME OF CONTRACTOR) hereby certifies the following in regard to application of the resident veterans' preference to this procurement.

**Please check one box only:**

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is less than \$1M allowing me the 10% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$1M but less than \$5M allowing me the 8% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I declare under penalty of perjury that my business prior year revenue starting January 1 ending December 31 is more than \$5M allowing me the 7% preference discount on this solicitation. I understand that knowingly giving false or misleading information about this fact constitutes a crime.

I agree to submit a report or reports to the State Purchasing Division of the General Services Department declaring under penalty of perjury that during the last calendar year starting January 1 and ending on December 31, the following to be true and accurate:

In conjunction with this procurement and the requirements of this business application for a Resident Veteran Business Preference/Resident Veteran Contractor Preference under Sections 13-1-21 or 13-1-22 NMSA 1978, which awarded a contract which was on the basis of having such veterans preference, I agree to report to the State Purchasing Division of the General Services Department the awarded amount involved. I will indicate in the report the award amount as a purchase from a public body or as a public works contract from a public body as the case may be.

I understand that knowingly giving false or misleading information on this report constitutes a crime.

I declare under penalty of perjury that this statement is true to the best of my knowledge. I understand that giving false or misleading statements about material fact regarding this matter constitutes a crime.

\_\_\_\_\_  
(Signature of Business Representative)\*

\_\_\_\_\_  
(Date)

\*Must be an authorized signatory of the Business.

The representation made by checking the above boxes constitutes a material representation by the business. If the statements are proven to be incorrect, this may result in denial of an award or un-award of the procurement.

SIGNED AND SEALED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

# SOUTHWEST ACTIVITY NODE PARK

## PARK MASTER PLAN

### LEGEND

- Master Plan Project Boundary
  - City / County Boundary
  - Building Footprint
  - Topography, 2-ft Contour
  - Drainageway, Major Arroyo
  - Drainageway, Minor
  - Open Space, Existing Native Landscape
  - Open Space, Enhanced Native
  - Open Space, Water Quality Pond
  - Open Space, Enhanced Riparian Area
  - Park Landscape
  - Grass, Irrigated Turf Lawn
  - Tree, Evergreen - Pinon + Juniper
  - Tree, Deciduous - Streetscaping
  - Tree, Deciduous - Riparian
- 
- 1 Multi-Purpose Sports Field (Artificial Turf)
  - 2 Playground
  - 3 Hillside Adventure Playground
  - 4 Basketball Court
  - 5 Fruit Tree Orchard
  - 6 Community Garden
  - 7 Horseshoe Pits/ Huachas
  - 8 Festival Lawn
  - 9 Tennis/ Pickleball Courts
  - 10 Maintenance/ Restrooms/ Concession Building
  - 11 Water Playground
  - 12 Community Lawn
  - 13 Skate Park/ Plaza
  - 14 BMX Pump Track
  - 15 Multi-Purpose Sports Fields (Natural Grass)
  - 16 Dog Park
  - 17 Park Overlook
  - 18 Hiker/ Biker Trailhead

### ILLUSTRATIVE PLAN

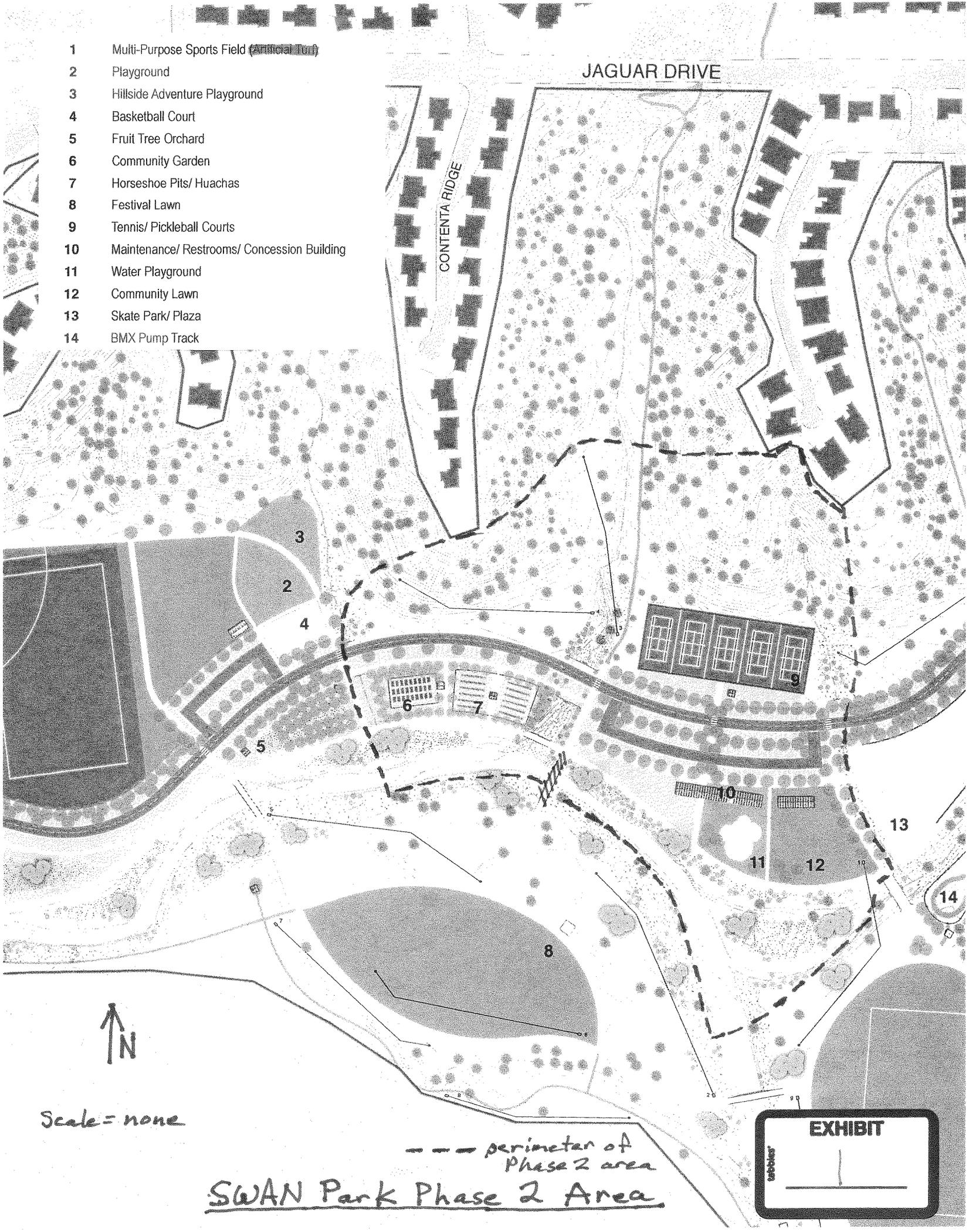
#### PARK MASTER PLAN



Produced for the City of Santa Fe  
design office . wenk + associates . Wilson & Company



- 1 Multi-Purpose Sports Field (Artificial Turf)
- 2 Playground
- 3 Hillside Adventure Playground
- 4 Basketball Court
- 5 Fruit Tree Orchard
- 6 Community Garden
- 7 Horseshoe Pits/ Huachas
- 8 Festival Lawn
- 9 Tennis/ Pickleball Courts
- 10 Maintenance/ Restrooms/ Concession Building
- 11 Water Playground
- 12 Community Lawn
- 13 Skate Park/ Plaza
- 14 BMX Pump Track



Scale = none

--- perimeter of Phase 2 area

SWAN Park Phase 2 Area

EXHIBIT

1



 **AIA** Document B101™ – 2007

*Standard Form of Agreement Between Owner and Architect*

**FOR RFP PURPOSES ONLY**

AGREEMENT made as of the      day of      in the year 2016

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

City of Santa Fe  
200 Lincoln Ave.  
Santa Fe, New Mexico 87501

and the Landscape Architect:

yet to be determined

for the following Project:

Southwest Activity Node (SWAN) Park Phase 2  
Plaza Central, South of Jaguar Drive.  
Tennis/Pickleball courts, horseshoe pits, community garden, water playground, small fruit orchard, restrooms, community lawn, shade structure with picnic tables, Arroyo Chamiso Trail sections, arroyo stabilization, parking lot, potable water & electrical extensions, new sanitary sewer lift station and park furnishings

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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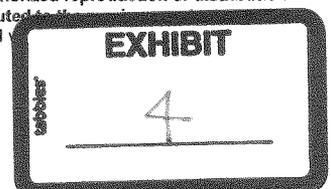


TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 LANDSCAPE ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF LANDSCAPE ARCHITECT'S BASIC SERVICES
- 4 ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article I and in optional Exhibit A, Initial Information:

*(Paragraph deleted)*

(  
SWAN Park Phase 2 area will be the western most area adjacent to the existing portion of the park. The design will include all of the park features in the Phase 2 area (refer to Exhibit 1) that are illustrated in the SWAN Park Master Plan, that can be constructed for four and a half million dollars (\$4,500,000.). The features include a park road extension, potable water line and electric line extensions, tennis/pickleball courts, horseshoe pits, community garden, water playground, small fruit orchard, restrooms, community lawn, shade structure with picnic tables, Arroyo Chamiso Trail sections, arroyo stabilization, parking lot, a sanitary sewer lift station and park furnishings.

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:

The construction commencement date is yet to be determined (no construction funding is available at this time); this original contract does not include bidding or construction phase services.

- .2 Substantial Completion date:

not available; see comment above (1.2.1)

§ 1.3 The Owner and Landscape Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Landscape Architect shall appropriately adjust the schedule, the Landscape Architect's services and the Landscape Architect's compensation.

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User Notes:

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**ARTICLE 2 LANDSCAPE ARCHITECT'S RESPONSIBILITIES**

§ 2.1 The Landscape Architect shall provide the professional services as set forth in this Agreement.

§ 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 for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Landscape Architect normally maintains, the Owner shall reimburse the Landscape Architect for any additional cost:

.1 General Liability

Each Occurrence \$1,000,000, damage to Rented Premises (Ea. Occurrence) \$1,000,000, Med Exp (Any one person) \$10,000, Personal & Adv Injury \$1,000,000, General Aggregate \$2,000,000, Products – Comp/Op Agg \$2,000,000, Emp Ben. \$1,000,000

.2 Automobile Liability

Combined single Limit (Ea accident) \$1,000,000

.3 Workers' Compensation

E.L. Each Accident \$1,000,000, E.L. disease – Ea. Employee \$1,000,000, E.L. Disease – Policy Limit \$1,000,000

.4 Professional Liability

Ea. Claim \$1,000,000, Aggregate \$2,000,000

**ARTICLE 3 SCOPE OF LANDSCAPE ARCHITECT'S BASIC SERVICES**

§ 3.1 The Landscape Architect's Basic Services consist of those described in Article 3 and include usual and customary architectural, and civil, structural, mechanical/plumbing, traffic and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Landscape Architect shall manage the Landscape Architect's services, consult with the Owner, 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 the accuracy and completeness 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 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. Once approved by the Owner, time

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limits established by the schedule shall not, except for reasonable cause, be exceeded by the Landscape Architect or Owner. With the Owner's approval, the Landscape Architect shall adjust the schedule, if necessary, as the Project proceeds until the completion of the bid documents.

§ 3.1.4 The Landscape Architect shall not be responsible for an Owner's directive or substitution made without the Landscape Architect's approval.

§ 3.1.5 The Landscape Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Landscape Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 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 PROGRAMMING PHASE SERVICES

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

§ 3.2.2 The Landscape Architect shall prepare a preliminary evaluation of the Owner's conceptual design, Project site, and the other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Landscape Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Landscape Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Landscape Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Landscape Architect shall prepare and present for the Owner's approval a program illustrating the scale and relationship of the Project components.

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

*(Paragraphs deleted)*

§ 3.2.6 The Landscape Architect shall submit the final Program to the Owner, and request the Owner's approval.

*(Paragraph deleted)*

### § 3.3 DESIGN DEVELOPMENT (PRELIMINARY DESIGN) PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Program, 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 of building systems to fix and describe the size and character of the Project as to architectural, civil, structural, mechanical, plumbing and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Landscape Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Landscape Architect shall submit the Design Development (Preliminary Design) 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.

**§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES**

§ 3.4.1 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 construct 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.

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

§ 3.4.3 The Landscape Architect shall update the estimate for the Cost of the Work.

§ 3.4.4 The Landscape Architect shall submit the Construction Documents and final cost estimate to the Owner on a flash drive, with all plans as AutoCad files and a pdf of the entire plan set, 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.

If it is in the best interest of the Owner, when construction funding becomes available, the following additional phases of work may be added to this agreement by amendment:

*(Paragraph deleted)*

**§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES**

**§ 3.5.1 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.

**§ 3.5.2 COMPETITIVE BIDDING**

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

§ 3.5.2.2 The Landscape Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Landscape Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

**§ 3.5.3 NEGOTIATED PROPOSALS**

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Landscape Architect shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

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§ 3.5.3.3 The Landscape Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

## § 3.6 CONSTRUCTION PHASE SERVICES

### § 3.6.1 GENERAL

§ 3.6.1.1 The Landscape Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Landscape Architect’s services under this Agreement unless the Owner and the Landscape Architect amend this Agreement.

§ 3.6.1.2 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 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.

§ 3.6.1.3 Subject to Section 4.3, 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.

### § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Landscape Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, 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 report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 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 such 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, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 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.

§ 3.6.2.4 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.

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§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Landscape Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### § 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 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 and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Landscape Architect.

§ 3.6.3.2 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 material 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.

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

### § 3.6.4 SUBMITTALS

§ 3.6.4.1 The Landscape Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. 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.

§ 3.6.4.2 In accordance with the Landscape Architect-approved submittal schedule, the Landscape Architect 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, unless otherwise specifically stated by the Landscape Architect, of any 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.

§ 3.6.4.3 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 Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Landscape Architect. The Landscape Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Landscape Architect 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 requests for information.

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§ 3.6.4.5 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.

**§ 3.6.5 CHANGES IN THE WORK**

§ 3.6.5.1 The Landscape Architect may authorize 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 the provisions of Section 4.3, the Landscape Architect shall prepare Change Orders and Construction Change Directives for the Owner’s approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Landscape Architect shall maintain records relative to changes in the Work.

**§ 3.6.6 PROJECT COMPLETION**

§ 3.6.6.1 The Landscape Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 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.

§ 3.6.6.3 When the Work is found to be substantially complete, 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.

§ 3.6.6.4 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; (3) as-built red line markup of the plan set; and (4) any other documentation required of the Contractor under the Contract Documents. The Landscape Architect shall also submit record drawings to the Owner, based upon the as-built red line markup from the Contractor. The record drawings shall be submitted on a flash drive in pdf and AutoCAD formats.

§ 3.6.6.5 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 ADDITIONAL SERVICES**

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Landscape Architect shall provide the listed Additional 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.

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1		
§ 4.1.2		
§ 4.1.3		
§ 4.1.4		
§ 4.1.5		
§ 4.1.6		
§ 4.1.7		
§ 4.1.8		

§ 4.1.9		
§ 4.1.10	Value Analysis (B204™–2007)	
§ 4.1.11		
§ 4.1.12	On-site Project Representation (B207™–2008)	
§ 4.1.13	Conformed construction documents	
§ 4.1.14	As-Designed Record drawings	
§ 4.1.15	As-Constructed Record drawings	
§ 4.1.16		
§ 4.1.17		
§ 4.1.18	Tenant-related services	
§ 4.1.19	Coordination of Owner’s consultants	
§ 4.1.20	Telecommunications/data design	
§ 4.1.21	Security Evaluation and Planning (B206™–2007)	
§ 4.1.22	Commissioning (B211™–2007)	
§ 4.1.23	Extensive environmentally responsible design	
§ 4.1.24	LEED® Certification (B214™–2012)	
§ 4.1.25	Fast-track design services	
§ 4.1.26		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Landscape Architect’s responsibility, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may only be provided after execution of this Agreement, without invalidating the Agreement, by written amendment signed by the City and the Landscape Architect. Except for services required due to the fault of the Landscape Architect, any Additional Services provided in accordance with this Section 4 shall entitle the Landscape Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Landscape Architect’s schedule.

§ 4.3.1 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 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, but not limited to, size, quality, complexity, the Owner’s schedule or budget for Cost of the Work, or procurement or delivery method;
  - .2 Services necessitated by the Owner’s request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
  - .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
  - .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 data 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, more than one public meeting.
  - .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 bidders or persons providing proposals;
  - .10 Consultation concerning replacement of Work resulting from fire or other cause during construction;
- or

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.11 Assistance to the Initial Decision Maker, if other than the Landscape Architect.

**§ 4.3.2**

*(Paragraphs deleted)*

If the services covered by this Agreement have not been completed within eighteen ( 18 ) 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.

*(Paragraphs deleted)*

**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. 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.

**§ 5.2** The Landscape Architect shall periodically update the estimated construction cost, 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. If the Owner significantly increases or decreases the maximum allowable construction cost at anytime after the programming phase is complete, 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 and quality.

**§ 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** Unless otherwise provided for under this Agreement, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

**§ 5.5** Unless otherwise provided for under this Agreement, the Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

**§ 5.6** 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 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 maintain professional liability insurance as appropriate to the services provided.

**§ 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.

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§ 5.9 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Landscape Architect's consultants through the Landscape Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Landscape Architect of any direct communications that may affect the Landscape Architect's services.

*(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 does not include the compensation of the Landscape Architect, the costs of the land, rights-of-way, financing, 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 may 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, 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 make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. 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 requests detailed cost estimating services, the Landscape Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Landscape Architect submits the Construction Documents to the Owner, through no fault of the Landscape Architect, 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.

*(Paragraphs deleted)*

#### **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. If the Owner and Landscape Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 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.

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§ 7.3 Upon execution of this Agreement, 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 this Project or any other City of Santa Fe project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. 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 material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for this Project or any other City of Santa Fe 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.

*(Paragraph deleted)*

§ 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.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 GENERAL

§ 8.1.1 The Owner and Landscape Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of dispute resolution selected in this Agreement 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.

*(Paragraphs deleted)*

### § 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 in accordance with the New Mexico Public Works Mediation Act. 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 If the parties agree to mediate a dispute, 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.

§ 8.2.3 The method of dispute resolution shall be in accordance with New Mexico Public Works Mediation Act 13-4C-1 through 13-4C-11, NMSA 1978.

*(Paragraphs deleted)*

## 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.

§ 9.2 If the Owner suspends the Project, the Landscape Architect shall be compensated for services performed prior to notice of such suspension.

§ 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 The Owner's rights to use the Landscape Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

*(Paragraphs deleted)*

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, 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.

§ 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.

§ 10.8 If the Landscape Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information, all subject to the requirements set forth in the New Mexico Inspection of Public Records Act, and City ordinances.

#### §10.9 INDEMNIFICATION

The Landscape Architect shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgements, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Landscape Architect's performance under this

Agreement as well as the performance of Landscape Architect's employees, agents, representatives and sub-consultants.

#### § 10.10 APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Landscape Architect. The City's decision as to whether sufficient appropriations are available shall be accepted by the Landscape Architect and shall be final.

#### § 10.11 THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Landscape Architect. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

#### § 10.12 STATUS OF LANDSCAPE ARCHITECT; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUB-CONSULTANTS

A. The Landscape Architect and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Landscape Architect, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

B. Landscape Architect shall be solely responsible for payment of wages, salaries and benefits to any and all employees or sub-consultants retained by Landscape Architect in the performance of the services under this Agreement.

C. The Landscape Architect shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

#### § 10.13 CONFLICT OF INTEREST

The Landscape Architect warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Landscape Architect further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

#### § 10.14 ASSIGNMENT: SUBCONTRACTING

The Landscape Architect shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City. The Landscape Architect shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

#### § 10.15 RELEASE

The Landscape Architect, upon acceptance of final payment of the amount due under this Agreement, releases the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Landscape Architect agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Landscape Architect has express written authority to do so, and then only within the strict limits of that authority.

#### § 10.16 INSURANCE

Init.

A. Landscape Architect shall also obtain and maintain Workers' compensation insurance, required by law, to provide coverage for Landscape Architect's employees throughout the term of this Agreement. Landscape Architect shall provide the City with evidence of its compliance with such requirement.

B. Landscape Architect shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Landscape Architect shall furnish the City with proof of insurance of Landscape Architect's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

#### § 10.17 RECORDS AND AUDIT

The Landscape Architect shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

#### § 10.18 APPLICABLE LAW: CHOICE OF LAW: VENUE

Landscape Architect shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Landscape Architect agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

#### § 10.19 AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

#### § 10.20 NON-DISCRIMINATION

During the term of this Agreement, Landscape Architect shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Landscape Architect hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

#### § 10.21 SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

#### 10.22 NOTICES:

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User Notes: (727208289)

Any and all notices provided for hereunder shall be in writing and shall be deemed delivered, given and received when (i) personally delivered, or (ii) five days after the same are deposited in the United States Postal Service mail, postage prepaid, certified mail, return receipt requested, addressed to the applicable party at the address indicated below for each party, or at such other address as may be designated by either party in a written notice to the other party.

OWNER: Facilities Division, Public Works Department  
 City of Santa Fe  
 PO Box 909  
 Santa Fe, New Mexico 87504-0909

LANDSCAPE ARCHITECT: .

**10.23 NEW MEXICO TORT CLAIMS ACT:**

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

**ARTICLE 11 COMPENSATION**

§ 11.1 For the Landscape Architect's Basic Services described under Article 3, the Owner shall compensate the Landscape Architect as follows:

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Landscape Architect as follows:

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Landscape Architect as follows:

none

§ 11.4 Compensation for Additional Services of the Landscape Architect's consultants when not included in Section 11.2 or 11.3, is not applicable.

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows, tax included:

Programming Phase	percent (	%)
Design Development Phase	percent (	%)
Construction Documents Phase	percent (	%)

---

Total Basic Compensation \$ percent ( 100 %)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Landscape Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

Init.

§ 11.7 The hourly billing rates for services of the Landscape Architect and the Landscape Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Landscape Architect's and Landscape Architect's consultants' normal review practices.  
(not applicable)

**§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES**

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

- .1 Mileage
- .2 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 Printing, reproductions, plots, standard form documents;
- .4 Public meeting recording and transcript;

*(Paragraphs deleted)*

- .5 All taxes levied on reimbursable expenses

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Landscape Architect and the Landscape Architect's consultants shall be \_\_\_\_\_, plus 0% of the expenses incurred. .

**§ 11.9 COMPENSATION FOR USE OF LANDSCAPE ARCHITECT'S INSTRUMENTS OF SERVICE**

If the Owner terminates the Landscape Architect for its convenience under Section 9.5, or the Landscape Architect terminates this Agreement under Section 9.3, all finished or unfinished documents, data, sketches, calculations, estimates, records, schedules, studies, surveys, drawings, maps, models, photographs, reports, and such other information and data accumulated in the performance of services under this Agreement, whether complete or in progress, prepared by the Landscape Architect under this Agreement shall become the Owner's property, and the Landscape Architect shall be entitled to receive compensation for actual work satisfactorily completed hereunder, including Reimbursable Expenses authorized by Owner which are then due.

**§ 11.10 PAYMENTS TO THE LANDSCAPE ARCHITECT**

§ 11.10.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable within twenty one (21) days of undisputed request for payment.

**§ 11.10.2**

*(Paragraphs deleted)*

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.

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

*(Paragraph deleted)*

**ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

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

not applicable

**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 Owner and Landscape Architect.

Init.

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

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Landscape Architect
- .2 Exhibit 1 SWAN Park Phase 2 Area Map

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below:

CITY OF SANTA FE:

\_\_\_\_\_  
JAVIER M. GONZALES, MAYOR

DATE: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
YOLANDA Y. VIGIL, CITY CLERK

LANDSCAPE ARCHITECT:

BY: \_\_\_\_\_

NM Taxation and Revenue CRS No.:

City of Santa Fe Business Registration No.:

APPROVED AS TO FORM:

 1/25/16  
\_\_\_\_\_  
KELLEY A. BRENNAN, CITY ATTORNEY

APPROVED:

\_\_\_\_\_  
OSCAR S. RODRIGUEZ, FINANCE DIRECTOR

32814.572960  
Business Unit / Line Item  
(Table deleted)

Init.  
/

# Living Wage Ordinance

*Ordinance Number §28-1 28-1.12 SFCC 1987*

***Purpose:***

The City of Santa Fe Living Wage Ordinance was adopted to establish minimum hourly wages.

***Who it affects:***

- All profit and nonprofit businesses required to have a business license or business registration with the City of Santa Fe.

***Compliance:***

- Affected businesses are required to pay employees an hourly wage of \$10.84 effective March 1, 2015.
- Beginning January 1, 2009, and each year thereafter, the minimum wage shall be adjusted upward by an amount corresponding to the previous year's increase, if any, in the Consumer Price Index for the Western Region for Urban Wage Earners and Clerical Workers.
- For workers who customarily receive more than \$100 per month in tips or commissions, any tips or commissions received and retained by a worker shall be counted as wages and credited toward satisfaction of the minimum wage provided that, for tipped workers, all tips received by such workers are retained by the workers, except that the pooling of tips among workers shall be permitted.
- The value of health care benefits and child care shall be considered as an element of wages.
- Nonprofit organizations whose primary source of funds is from Medicaid waivers are *exempt*.

***Prohibitions against retaliation and circumvention:***

- It shall be unlawful for any business, employer or employer's agent or representative to take any action against an individual in retaliation for exercising or communicating rights under this ordinance. This includes retaliation against individuals who mistakenly but in good faith allege noncompliance with the ordinance.
- Taking adverse action against an individual within 60 days of the individual's assertion of or communication of information regarding rights raises a reputable presumption of retaliation for assertion of rights.
- It shall be unlawful for any business or employer to intentionally circumvent the requirements of this ordinance by contracting portions of its operations or leasing portions of its property.

***Enforcement and Remedies:***

- Administrative Enforcement—The city manager, or his/her designee, is authorized, as appropriate and as resources permit, to enforce this ordinance.
- Criminal Penalty—A person violating this ordinance shall be guilty of a misdemeanor and, upon conviction, for each offense may be subject to fines and imprisonment as set forth in Section 1-3 SFCC 1987. A person violating any of the requirements of this ordinance shall be guilty of a separate offense for each day or portion thereof and for each worker or person to whom any such violation occurred.
- Other Remedies—The city, any individual aggrieved by a violation of this ordinance, or any entity the members of which have been aggrieved by a violation of this ordinance, may bring a civil action in a court of competent jurisdiction to restrain, correct, abate or remedy any violation of this ordinance and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, reinstatement, the payment of any wages due and an additional amount as liquidated damages equal to twice the amount of any wages due, injunctive relief, and reasonable attorney's fees and costs.

***Nonexclusive Remedies and Penalties—The remedies provided in this section are not exclusive, and nothing in this ordinance shall preclude any person from seeking any other remedies, penalties, or relief provided by law.***

***Posting and Publication:***

- Any business subject to the provisions of this ordinance shall as a condition to obtaining and holding a City of Santa Fe business license or registration, post and display in a prominent location next to its business license or registration on the business premises a notice, in English and Spanish, that the business is in compliance with the provisions of this ordinance and post the text of this notice. Failure to comply with this section shall be construed a violation of this ordinance and, in addition, shall be considered grounds for suspensions, revocation, or termination of the business license or registration.

***For more information, please contact: Constituent Services at 955-6949 Email: [constituentservices@santafenm.gov](mailto:constituentservices@santafenm.gov)***