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City of Walterboro

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Walterboro, South Carolina 29488

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Walterboro, South Carolina 29488-0008

Walterboro City Council

Regular Meeting

August 23, 2011

City Hall

6:15 P.M.

A G E N D A

I. Call to Order:

1. Invocation.
2. Pledge of Allegiance.

II. Public Input on Agenda Items:

III. Approval of Minutes:

1. Minutes of the August 9, 2011 Public Hearing and Regular Meeting (Minutes attached).

IV. Old Business:

V. New Business:

1. **Ordinance # 2011-13**, An Ordinance Making it a Duty of the Mayor to Provide Annually to the City Council and Citizens of Walterboro Information Regarding the State of the City, **First Reading** (Ordinance attached).
2. Consideration of Contract with Wood + Partners for Design Development, Contractual Document Services, Bidding, Construction, Design Services, Permitting and Submittal Services for Implementation of the Parks Master Plan(\$189,500) (Contract attached).
3. Consideration of Recommendations from Wood + Partners on Converting Walter Street from One-Way to Two-Way Traffic (Summary sheet attached).
4. Consideration of Bids for Mulch at Exits 53 and 57 (Memorandum attached).
5. Consideration of Bids Received for Application of Mulch at Exits 53 and 57 (Memorandum attached).
6. Request to Hang Banner for Life Insurance Awareness Month September 12-16, 2011 (Letter attached).

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VI. Committee Reports:

VII. Executive Session:

VIII. ADJOURNMENT.

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Walterboro City Council
Public Hearing and Regular Meeting
August 9, 2011

MINUTES

A Public Hearing and Regular Meeting of Walterboro City Council was held at City Hall on Tuesday, August 9, 2011 at 6:15 P.M., with Mayor Bill Young presiding.

PRESENT WERE: Mayor Bill Young, Council Members: Paul Siegel, Dwayne Buckner, Charles Lucas, Randy Peters, Tom Lohr and Bobby Bonds. City Manager Jeff Lord, City Clerk Betty Hudson and City Attorney George Cone were also present. There were approximately 13 persons present in the audience.

There being a quorum present, Mayor Young called the meeting to order and gave the invocation. Council Member Lucas led the pledge of allegiance to our flag.

Council Member Buckner then personally thanked everyone for their kind words and condolences during the death of his father, Mr. Floyd Buckner.

Taking a moment of privilege as Mayor of Walterboro, Mayor Young delivered a brief address reassuring the public of the City's commitment to a safer community and its focus on fighting crime. He stated, "I'd like to take a moment of privilege as Mayor to reassure everyone that public safety remains the number one priority of City Council. We deal with this every day as we look for innovative ways to deal with the criminal element in our community. We continue to impress on our City Manager the urgency of our responsibility to keep our citizens and their property safe, and he has, in turn, passed this on to Chief Otis Rhodes and our public safety department. We will not surrender to gangs, or to drug violence, or those who would have us live in fear."

During his speech, the Mayor also identified several areas of initiatives that the City has taken to combat crime including its 10-point plan, community safety initiative, neighborhood revitalization, education, training and technical assistance.

He noted that "neighborhood revitalization will improve the appearance of neighborhoods through demolition of vacant and dilapidated buildings, clearance, renovation, security street lighting, sidewalks for pedestrian safety, painting and minor repairs to building exteriors." Training and technical assistance will be provided by local and state law enforcement agencies. He also stated that the Department of Juvenile Justice is working with at-risk youth by offering academic assistance through mentor programs and job skills training. They are also offering work experience through community improvement activities and internships with local businesses and organizations.

Mayor Young also said, "I am also looking at supporting legislation, and I hope that Council will join me when they have a chance to look at it, which will give the solicitor's office additional tools to investigate crimes and bring those responsible to justice."

"I'd like to thank those who have formed neighborhood watch groups. We need the cooperation of everyone in Walterboro to be successful. It's important that you report all criminal activity and that you report it immediately, so that we have a better chance of apprehending those who are responsible."

Concluding his statement, Mayor Young said, "To anyone who is thinking about committing a crime in the City of Walterboro, I say to you, we will catch you, we will prosecute you and we will lock you up. Again, let me reassure everyone that we are committed to this effort. Fighting crime is a process, not a goal with a definable conclusion, but we will provide the resources necessary for our city to be successful and we will continue to do whatever is required to have positive results."

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PUBLIC INPUT ON AGENDA ITEMS:

There were no public comments received on the agenda items, however, at this point Mr. Horace Simmons, community leader of the organization, "Community Action Line Against Violence," asked if there were a way to assure the public if they see something and call it in, then their name will not be given out. City Manager Jeff Lord told Mr. Simmons that anyone calling to report a crime to the Walterboro Police Department can do so anonymously, because the phones in dispatch do not have caller I.D., so persons can call in anonymous tips.

PUBLIC HEARING:

The Mayor opened a public hearing to receive public comments on the following ordinances:

1. Ordinance # 2011-10, An Ordinance Providing for the Issuance and Sale of a Tax Increment Refunding Revenue Bond, Series 2011, of the City of Walterboro, South Carolina, and Other Matters Relating Thereto.
2. Ordinance # 2011-11, An Ordinance Providing for the Issuance and Sale of Waterworks and Sewer System Refunding Revenue Bonds, Series 2011 of the City of Walterboro, South Carolina, and Other Matters Relating Thereto.
3. Ordinance # 2011-12, An Ordinance Providing for the Issuance and Sale of a Hospitality Tax Revenue Bond, Series 2011, of the City of Walterboro, South Carolina, and Other Matters Relating Thereto.

The Mayor then said, we will go ahead and reexplain each ordinance during the public hearing, so everyone will know what we are doing, in case you wish to make a comment. City Manager Lord then called on the City's Bond Attorney, Ms. Margaret Pope and Finance Director Dennis Averkin to explain each ordinance.

Finance Director Dennis Averkin pointed out that on July 12, we brought before Council the first reading of an ordinance which would authorize us to effectively shop for better interest rates on these bond issues. We have received interest rates that are extremely favorable for the City of Walterboro, and will save the taxpayers a significant amount of money.

Ordinance # 2011-10, An Ordinance Providing for the Issuance and Sale of a Tax Increment Refunding Revenue Bonds, Series 2011, of the City of Walterboro, South Carolina and Other Matters Relating Thereto.

Mr. Averkin pointed out that the original issue of these bonds was at a 4.22%. The winning bid came from BB&T Bank at a rate of 2.64%. This will save the City approximately \$81,678.75 over the remaining duration of this issue. On an annualized difference, it's about \$7,000 a year over the remaining years. This is a substantial savings to the City. Ms. Pope pointed out that the savings figure is a net savings, after paying for the cost of getting the refunding done. She also noted that principal amount of this bond issuance would be \$1,281,800.43.

The Mayor opened the floor for any comments or questions from the public. **No comments or questions were received on Ordinance # 2011-10.**

Ordinance # 2011-11, An Ordinance Providing for the Issuance and Sale of Waterworks and Sewer System Refunding Revenue Bonds, Series 2011 of the City of Walterboro, South Carolina, and Other Matters Relating Thereto.

Mr. Averkin stated that the principal amount of this new bond issue would be \$2,051,000,000. Currently the city has debt service reserve funds held in escrow,

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which we will simply use to pay down the principal. So, we are using that money advantageously to actually reduce the amount of outstanding debt owed by the City. The new refunding rates are for two bond issues (2011A and 2011B). The interest rate for 2011A is 2.04% and for 2011B the interest rate is 2.98%. The net percentage savings of these bonds is 3.96%. The total savings over the remaining life of these issues is \$489,846.15. Ms. Pope pointed out that of this savings of \$489,846.15, we are using \$330,624,52 of the city's own money from this debt service account. The savings is still over \$100,000. The interest rates on these bonds were submitted by BB&T Bank.

No public comments were received on Ordinance # 2011-11.

Ordinance # 2011-12, An Ordinance Providing for the Issuance and Sale of a Hospitality Tax Revenue Bond, Series 2011, of the City of Walterboro, South Carolina, and Other Matters Relating Thereto.

Finance Director Dennis Averkin reminded Council that this is the bond issue that was used to fund the Veterans Victory House. He reported that a bid was procured at the rate of 2.64% as opposed to the old rate of 4.11% for this bond. The refunding issue will save the City approximately \$63,804.07, which is approximately \$6,203.06 a year.

Combining the savings of all three issues:

Revenue Bond -	\$489,846.15
TIF:	- \$ 81,678.75
Hospitality	- <u>\$ 63,804.07</u>
Total	\$635,328.97

Mr. Averkin stated, if you wanted to net this out, the total savings would be around \$300,000, and this is worthwhile.

There were no comments or questions on this Ordinance # 2011-12.

Mayor Young congratulated Finance Director Dennis Averkin and Ms. Margaret Pope for the good job done in securing the bids on the bonds. He felt it was a good thing to save the City \$300,000.

The public hearing was then closed, and the regular meeting began.

APPROVAL OF THE MINUTES:

Upon motion by Council Member Peters, seconded by Council Member Lucas, the following minutes were approved as submitted:

1. Minutes of the June 14, 2011 Public Hearing and Regular Meeting.
2. Minutes of the June 28, 2011 Public Hearing and Regular Meeting.
3. Minutes of the July 12, 2011 Regular Meeting.

OLD BUSINESS:

1. **Ordinance # 2011-10**, An Ordinance Providing for the Issuance and Sale of a Tax Increment Refunding Revenue Bond, Series 2011, of the City of Walterboro, South Carolina, and Other Matters Relating Thereto.

Upon Motion of Council Member Peters, seconded by Council Member Lucas, Ordinance # 2011-10 was given Second Reading and Adoption.

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In discussing the motion, Council Member Buckner stated, I want to say that I appreciate the work of the Pope, Seigler Law Firm and city staff for finding this extra \$300,000 savings over a 10-year period. The only issue now is what we are going to do with this extra \$300,000. My thought would be that we could use this money to help the dilapidated areas of the city and high crime areas, especially for those particular areas that need sidewalks, especially coming off of Walterboro Village, coming from the Village into South Jefferies, and sidewalks on Henderson Street. Mr. Buckner pointed out the article by Mr. Horace Simmons expressing the need for sidewalks in the Blanchard Line area. I would like to see us as Council, and hopefully the community, make a commitment to take this money and beautify these areas of the city that need development and revitalization.

Mayor Young then stated, I would like to remind Council that the issue before Council is the issue of the re-issuance of the bonds, and that is what we are considering at this time, not how we will spend savings.

Council Member Lucas then asked if the rates were locked in? Ms. Pope responded that the rates are locked in as long as we close 30 days from the date of the bid. We have until, I think, August 29th.

Ms. Pope then said, there is one point I wanted to let you know. I am often asked what is the difference in the ordinance between first and second readings. The only change in each of these ordinances is that we actually inserted the bid and the name of the bank. We previously had them so that the City Manager would review the bids and just award it to the lowest interest rate. But because we received the bids before Second Reading, we just went ahead and put the interest rate and the name of the bank that won the award into the ordinances.

Council Member Peters then asked what was the timing left on the bonds. Mr. Averkin said the time limit ranged between 5 and 10 years. On another question raised by Council Member Peters, Ms. Pope pointed out that on the utility bonds, we have two issues. They were both at the same interest rate, but one was much shorter than the other, and we went back to BB & T Bank about this. So, what he did instead of giving us an interest rate of 2.98% for the entire issue, he backed up and the smaller piece that matures in about 5 years would be at a rate of \$2.04 which actually saves more money. In conclusion, Ms. Pope stated that most of them are 10 years or 11 years. Mr. Averkin pointed out that none of the new maturity dates extend beyond the original maturity dates.

The Mayor then stated, I will not be voting on this because of my affiliation with BB&T Bank. I did a recusal statement earlier on this, so I will not be voting on this.

The motion to adopt Ordinance # 2011-10 passed with all members voting in favor, except Mayor Young recused himself from voting due to a conflict of interest because of his relationship with BB&T Bank.

2. **Ordinance # 2011-11**, An Ordinance Providing for the Issuance and Sale of Waterworks and Sewer System Refunding Revenue Bonds, Series 2011 of the City of Walterboro, South Carolina, and Other Matters Relating Thereto.

A motion giving Second Reading and Adoption to Ordinance # 2011-11 was made by Council Member Lucas, and seconded by Council Member Peters.

In discussing the motion, Council Member Buckner was recognized and stated, I just want to go on record reiterating my support that the re-issuance of these bonds is contingent upon the hope that the money we save on these bonds re-issuance would

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go toward making sure that those areas that need the most development and revitalization and high crime areas, that we designate the money to be able to address those issues.

Mayor Young then said, and I'd also like to say that we already have almost a million dollars in the new Safety Initiative going toward neighborhoods for that purpose. We can also save the taxpayers this money, too, and not spend it.

The Mayor then stated, again, I am recusing myself from voting on this because of my association with BB&T Bank.

The motion to adopt Ordinance # 2011-11 passed with all members voting in favor, except Mayor Young recused himself from voting due to a conflict of interest because of his relationship with BB&T Bank.

3. **Ordinance # 2011-12**, An Ordinance Providing for the Issuance and Sale of a Hospitality Tax Revenue Bond, Series 2011, of the City of Walterboro, South Carolina, and Other Matters Relating Thereto.

A motion was made by Council Member Peters, seconded by Council Member Lucas giving Second Reading and Adoption to Ordinance # 2011-12.

In discussing the motion, Council Member Buckner stated, Mr. Mayor it is my understanding if you are recusing yourself from voting then you've got no place to make any positive comments during the discussion period, but you have done so not only once sir, but twice. Therefore, I would like to caution you on talking during the discussion, if you are recusing yourself. I don't know if it is appropriate for you to participate in the discussion during that time.

The Mayor then stated, you are right Mr. Buckner, but when you did that I told you privately. But I am referring to what you are talking about which actually is out of order, which is how to spend the saved money which is not an issue which is before Council. But you are correct on that.

There was no further discussion, and **the motion to adopt Ordinance # 2011-12 passed with all members voting in favor, except Mayor Young recused himself from voting due to a conflict of interest because of his relationship with BB&T Bank.**

NEW BUSINESS:

1. Request to Use Great Swamp Sanctuary for Colleton Medical Center's American Health Walk on September 10, 2011.

Ms. Linda Poole, RN at Colleton Medical Center was present to present this item to Council. Ms. Poole said this is my second year as the team leader for the American Heart Walk for the hospital. We are affiliated with the American Heart Lowcountry Walk which will be in Charleston on September 17. The release we are asking for the use of the Great Swamp Sanctuary is because we do this to raise money. We charge about \$20 a walker. This year, we did have a whole bunch to participate, but it was our first year. We have people walk through the Sanctuary that have never been through it before. So, we are asking to use it again this year on September 10, starting at 8:00 A.M. beginning at Jefferies and Washington Street.

A motion granting the request to use the Great Swamp Sanctuary for the American Heart Walk on September 10 as requested was made by Council Member

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Buckner, seconded by Council Member Lucas and passed with all members voting in favor.

The Mayor announced that the city would also have a ribbon cutting ceremony that day for the new boardwalk, but we will have more information on that later.

COMMITTEE REPORTS:

No committee reports were given.

The Mayor then entertained a motion to enter into an Executive Session. Council Member Lucas so moved to enter an Executive Session. Council Member Buckner seconded the motion that passed unanimously. The Mayor announced that the meeting would enter an Executive Session for a discussion of appointments and receipt of legal advice, and a discussion regarding the development of security personnel and devices.

The meeting then convened into an Executive Session.

The meeting returned to Open Session, and a motion was made by Council Member Lucas to appoint R. Clenton Campbell as the Public Prosecutor. Council Member Peters seconded the motion. Council Member Bobby Bonds then recused himself from voting on this matter to avoid any potential conflict of interest in that he has a law partner who may appear in the city's public court from time to time. Council Member Paul Siegel also recused himself from voting on this matter. He stated, my reason is that I want to avoid the appearance of a conflict in interest, because I may and I am reserving the right to practice in the courts.

The motion passed with a vote of 5/0 with Mayor Young, Council Members Buckner, Lucas, Peters and Lohr voting in favor. Council Members Bonds and Siegel recused from voting due to a potential conflict of interest as stated.

There being no further business, a motion to adjourn was made by Council Member Peters, seconded by Council Member Lucas and passed unanimously. The Mayor adjourned the meeting at 8:10 P.M. Notice of this meeting was distributed to all local media and posted on the City Hall bulletin board at least twenty-four hours prior to meeting time.

Respectfully,

Betty J. Hudson
City Clerk

ORDINANCE # 2011-13

AN ORDINANCE MAKING IT A DUTY OF THE MAYOR TO PROVIDE ANNUALLY TO THE CITY COUNCIL AND CITIZENS OF WALTERBORO INFORMATION REGARDING THE STATE OF THE CITY.

WHEREAS, it would be beneficial to the citizens, business owners, and City Council to be informed annually of the state of the City, the work of the previous year, and the City's future outlook;

WHEREAS, the Mayor presides at all meetings of Council and is recognized as the head to the City for all ceremonial purposes.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the City of Walterboro, in Council Assembled, that the Mayor, with the assistance and guidance of the City Manager, shall annually at a regular City Council meeting in January provide information regarding the state of the City.

DONE, this _____ day of _____, 2011.

William T. Young, Jr.
Mayor

ATTEST:

Betty J. Hudson
City Clerk

First Reading: _____
Second Reading: _____

AIA[®] Document B101™ – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 15 day of August in the year 2011
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Mr. Jeffrey V. Lord
City Manager
City of Walterboro, SC
242 Hampton Street
Walterboro, SC 29488

and the Architect:
(Name, legal status, address and other information)

Wood + Partners Inc.
7 Lafayette Place
Hilton Head Island, SC 29926

for the following Project:
(Name, location and detailed description)

City of Walterboro, SC - Park Improvements
This project includes design development through construction phase services for improvements in six existing parks in Walterboro, SC including: Doodle Hill Park, Forest Hills Tennis Center, Gladys Whiddon Park, Gruber Street Park, Mayfield Terrace Park and Pinckney Park as reflected in both short term and long term improvements in the Comprehensive Park Master Plan Study prepared by WPI for the City of Walterboro.
WPI Project Number: 01-11011

See Exhibits:

- Exhibit A – Article 12
- Exhibit B - Agreement Terms and Conditions / Hourly Rates
- Exhibit C – Park Master Plan Cost Summary
- Exhibit D – Comprehensive Park Master Plan – Previously Submitted to Owner Under Separate Cover

The Owner and 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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EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit, Initial Information:
None

§ 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:

To be determined

.2 Substantial Completion date:

To be determined, construction phase services budgeted for a period of eight months for construction and one month for project closeout

§ 1.3 The Owner and 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 Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall

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perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

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

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

§ 2.5 The 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 Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

\$1,000,000

.2 Automobile Liability

\$1,000,000

.3 Workers' Compensation

\$100,000

.4 Professional Liability

\$1,000,000

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

§ 3.1.1 The Architect shall manage the 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 Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The 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 Architect shall provide prompt written notice to the Owner if the 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 Architect shall submit for the Owner's approval a schedule for the performance of the 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 limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

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

3.1.5 Wherever used, the term Architect shall be used to represent Landscape Architect and/or Architect and Engineer.

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User Notes:

(1463374186)

(Paragraphs deleted)

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES (Not in Contract)

(Paragraphs deleted)

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 The Architect shall initiate Design Development Phase Services with a Project kick-off meeting with the Client and other interested parties to review design objectives, project budgets and schedule.

§ 3.3.1 Based on the Owner's approval of previously prepared and approved Comprehensive Park Master Plan Study, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Master Plan Document and shall consist of drawings and other documents including plans, sections, elevations, conceptual construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical 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 Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall present the Design Development documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 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 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 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.

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

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

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

§ 3.4.5 The Architect shall present the Construction Documents at a 90% level of completeness to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

3.4.6 The Architect shall submit final Construction Documents to the Owner for bidding.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in obtaining competitive bids for the project.

§ 3.5.2 COMPETITIVE BIDDING

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

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

- .1 providing electronic copies of Bidding Documents for the Owner to procure reproductions for distribution to prospective bidders;
- .2 assisting with 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 assisting with organizing and conducting a pre-bid conference for prospective bidders;
- .4 assisting with 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 assisting with organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

(Paragraph deleted)

§ 3.5.3 NEGOTIATED PROPOSALS (Omitted)

§ 3.5.3.1 Omitted

(Paragraphs deleted)

§ 3.6 CONSTRUCTION PHASE SERVICES

3.6.1 GENERAL

(Paragraph deleted)

§ 3.6.1.1 The 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 Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The 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 Architect be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the 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 Architect’s responsibilities to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment. If this period extends beyond 8 months, then Construction Phase Services will be provided as additional services.

(Paragraph deleted)

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at approved intervals as appropriate to the stage of construction, but not more than twice a month, 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 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 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.

(Paragraphs deleted)

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the 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 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 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 Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either of the Owner or the Contractor. The Architect's response to such request 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 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 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 Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 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 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 Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the 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 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 Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the 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 Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The 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 Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the 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 Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The 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 Architect shall specify the

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appropriate performance and design criteria that such services must satisfy. The 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 Architect. The 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 Architect shall review and respond to requests for information about the Contract Documents. The 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 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 Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

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

§ 3.6.6 PROJECT COMPLETION

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

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

3.6.7 CONSTRUCTION PERIOD

3.6.7.1 The construction period covered by basic services is 8 months. Construction phase services provided beyond this time period will be provided as additional services.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1

(Paragraphs deleted)

GENERAL

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User Notes:

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§ 4.1.1 The services described in this Article 4 are not included in Basic Services unless so identified in Article 12, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Paragraphs 4.2 and 4.4 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Paragraph 4.3 are required due to circumstances beyond the Architect's control, the Architect shall notify the Owner prior to commencing such services. If the Owner deems that such services described under Paragraph 4.3 are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, The Architect shall have no obligation to provide those services.

§ 4.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

§ 4.2.1 If construction representation at the site is required, the Architect shall provide one or more Project Representatives to assist in carrying out such on-site responsibilities as additional services .

§ 4.2.2 Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefor as agreed by the Owner and Architect. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in the edition of AIA Document B352 or current equivalent as of the date of this Agreement, unless otherwise agreed.

§ 4.2.3 Through the presence at the site of such Project Representatives, the Architect shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect or the Owner as described elsewhere in this Agreement.

§ 4.3 CONTINGENT ADDITIONAL SERVICES

§ 4.3.1 Making revisions in drawings, specifications or other documents when such revisions are:

- .1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
- .2 required by the enactment or revision of codes, laws or regulations or official interpretations subsequent to the preparation of such documents; or

(Paragraphs deleted)

- .3 due to changes required as a result of the Owner's failure to render decisions in a timely manner.

§ 4.3.2

(Paragraphs deleted)

Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, budget for Cost of the Work, or the method of bidding or negotiating and contracting for construction, except for services required under Subparagraph 6.7.

§ 4.3.3

(Paragraphs deleted)

Preparing Drawings, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives.

§ 4.3.4 Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

§ 4.3.5 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

§ 4.3.6 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

§ 4.3.7 Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work.

§ 4.3.8 Preparation for, and attendance at, a public presentation, meeting or hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto.

§ 4.3.9 Preparation of design and documentation for alternate, separate or sequential bids, proposal requests proposed by the Owner or providing services in connection with bidding, negotiation or construction.

§ 4.4 OPTIONAL ADDITIONAL SERVICES

§ 4.4.1 Providing analyses of the Owner's needs and programming the requirements of the Project.

§ 4.4.2 Providing financial feasibility or other special studies.

§ 4.4.3 Providing land surveys, site evaluations or comparative studies of prospective sites.

§ 4.4.4 Providing special surveys, environmental studies and submissions required approvals of governmental authorities or others having jurisdiction over the Project.

§ 4.4.5 Providing services relative to future facilities, systems and equipment.

§ 4.4.6 Providing services to investigate existing conditions or facilities or to make measured drawings thereof.

§ 4.4.7 Providing services to verify the accuracy of drawings or other information furnished by the Owner.

§ 4.4.8 Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.

§ 4.4.9 Providing services in connection with the work of a construction manager or separate consultants retained by the Owner.

§ 4.4.10 Evaluation of the qualifications of bidders or persons providing proposals .

§ 4.4.11 Providing detailed quantity surveys or inventories of material, equipment and labor.

§ 4.4.12 Providing analyses of owning and operating costs.

§ 4.4.13 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

§ 4.4.14 Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.

§ 4.4.15 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

§ 4.4.16 Providing services after issuance to the Owner of approved Construction Documentation.

§ 4.4.17 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;

§ 4.4.18 Providing services of consultants for other than landscape architectural portions of the Project provided as a part of Basic Services.

§ 4.4.18 Providing other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted landscape architectural practices.

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)
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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 Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the 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 Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 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.

(Paragraph deleted)

§ 5.5 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 Architect. Upon the 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 Architect to furnish them as an Additional Service, when the 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 tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 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.

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

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§ 5.10 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 Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

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

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

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 Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the 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 Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the 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 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 Architect.

§ 6.3 In preparing estimates of the Cost of Work, the 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 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 Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the 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 Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the 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 Architect in making such adjustments.

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

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

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the

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conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The 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 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 Architect and the 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 Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the 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 the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

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

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and 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 binding 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. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

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

§ 8.2 MEDIATION

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

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

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

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

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

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other (Specify)

§ 8.3 ARBITRATION

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

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

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

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

§ 8.3.4 CONSOLIDATION OR JOINDER

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

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

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

ARTICLE 9 TERMINATION OR SUSPENSION

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

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

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the 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 Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

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

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ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the 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 Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The 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 Architect.

§ 10.6 Unless otherwise required in this Agreement, the 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 Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the 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.

ARTICLE 11 COMPENSATION

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

(Insert amount of, or basis for, compensation.)

| See Exhibit A - Article 12 for Basic Services Compensation

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

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

| See Section 11.3 below

§ 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 Architect as follows:

(Insert amount of, or basis for, compensation.)

Init.

Compensation for additional services rendered by principals, employees and professional consultants shall be based on WPI Agreement Terms and Conditions / Hourly Rates in effect at the time the work is accomplished or as negotiated at time services offered.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus twenty-five percent (25%), or as otherwise stated below:

or as negotiated at time service added.

§ 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: (See Article 12 for Basic Services Compensation)
(Table deleted)

§ 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 Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

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

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See attached WPI Agreement Terms and Conditions / Hourly Rates
(Table deleted)

§ 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 Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

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

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

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

Inf.

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of 0 (\$ zero) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

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

One and one-half percent (1.5%) above prime computed monthly after thirty (30) days.

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

§ 11.10.4 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.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

See Attached Article 12 for other conditions or services and WPI Agreement Terms and Conditions / Hourly Rates

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the 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 Architect.

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

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:

(Paragraphs deleted)

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

OWNER

ARCHITECT



(Signature)

Jeffrey V. Lord City Manager

(Printed name and title)

(Signature)

Mark L. Baker ASLA, Partner

(Printed name and title)

EXHIBIT A
ARTICLE 12 - OTHER CONDITIONS OR SERVICES

- 12.1 The project scope for this project will include both the short term and long term recommendations in the Walterboro Comprehensive Park Master Plan Study for all six parks including Doodle Hill Park, Forest Hills Tennis Facility Park, Gladys Whiddon Park, Gruber Street Park, Mayfield Terrace Park and Pinckney Park.
- 12.2 Where conflicts occur, or there are matters of interpretation, between the AIA Document B101 - 2007, and Exhibit B, Article 12- Other Conditions or Services (Exhibit B), then the Exhibit B shall prevail.
- 12.3 Amend Article 3 "Scope of Architect's Basic Services" to include the following:
- 12.3.1 Owner delays in reviews, decisions and directives to the Consultant will equate to equal delays in design and construction delivery dates.
- 12.3.2 Add the following Article 3.1.6: Basic services shall include the preparation of one set of construction documents for all six parks to be bid and constructed concurrently as one project. If additional sets of bid documents are requested by the owner or if projects are to be constructed separately, then fees for these design and construction phase services will be provided as additional services.
- 12.3.3 Add the following Article 3.1.7: The local power company will provide all site electrical design and engineering services for parking lot and area lighting.
- 12.3.4 Add the following Article 3.1.8: Basic services shall include architectural services for the picnic shelter with overlook platform in the Forest Hills Tennis Facility Park and the picnic shelter with restrooms in Pinckney Park. The picnic shelters in Doodle Hill Park and the Gruber Street Park will be specified from product literature.
- 12.3.5 Add the following Article 3.1.9: Basic services shall include the preparation and submittal of one round of application packages to obtain normal engineering permits/approvals for storm water, erosion control; water and sewer from SC DHEC and all other State and Local permits / approvals and attend meetings as required and obtaining certifications of Water and Sewer Systems from regulatory agencies. Permitting and submittal services do not include daily inspections or special permits for environmental work. Wetland permit application and submittal services will be provided, if required, as additional services.
- 12.5 Amend Article 3.6 "Construction Phase Services" to include the following:
- 12.5.1 Add the following Article 3.6.1.4: Construction phase services are based on a seven month construction period with one additional month for project close out, with a total construction period of eight months. Construction phase services provided beyond this time will be provided as additional services. See Article 12.9 below.
- 12.6 Amend Article 4 "Additional Services" to include the following:
- 12.6.1 Add the following Article 4.3.10: All Additional Services shall be approved in advance by the Owner. Additional Services may include but are not limited to the following:
- 12.6.1.1 Providing services to investigate soils or geotechnical conditions.
- 12.6.1.2 Providing services to investigate, survey, permit or remediate environmental conditions such as wetlands, hazardous waste or endangered species or archaeological or cultural resources.
- 12.6.1.3 Conducting public workshops, trips or additional meetings.

Walterboro, SC Park Improvements – Exhibit A
Article 12

- 12.6.1.4 Providing services for professional consultants beyond WPI staff or consultants listed herein.
 - 12.6.1.5 Providing more than one bid package or providing construction phase services for more than the one construction contract outlined and/or re-packaging and/or issuing documents for subsequent bidding and construction phase services.
 - 12.6.1.6 Providing more than one round of normal engineering submittal packages and/or applications for permitting.
 - 12.6.1.7 Providing Interior design services and/or furnishings services and/or kitchen design services.
 - 12.6.1.8 Providing traffic studies, traffic engineering services or DOT encroachment permitting services.
 - 12.6.1.9 Providing engineering services to design a well and/or pumps for irrigation or ponds or lakes.
 - 12.6.1.10 Providing site electrical engineering services for parking lot and pedestrian area lighting.
 - 12.6.1.11 Providing fire protection engineering sprinkler design services.
 - 12.6.1.12 Providing LEED or Green project certification or submittal services.
 - 12.6.1.13 Providing renderings or three dimensional illustrations.
- 12.7 Amend Article 5 "Owner's Responsibility" to include the following:
- 12.7.1 Add the following Article 5.13:
 - 12.7.1.1 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents for public approvals and related matters. The Owner acknowledges, however, that the approval of governmental bodies having jurisdiction over the Project is based, in part, on non-objective criteria. Such criteria include, but are not limited to, local political conditions, labor and union issues, community opposition, and similar matters. Therefore, the Architect cannot and does not warrant or guarantee any particular result or that the Project will receive the approvals that may be required. The Owner shall have no course of action against the Architect arising out of the failure of any governmental body to grant any approval, or for the revocation of any approval previously given.
 - 12.7.1.2 The Owner shall provide the following:
 - 12.7.1.2.1 State of South Carolina land surveys in digital format certified and sealed by registered surveyor of existing conditions for the project site, including but not limited to tree and topography surveys at 1 foot intervals; Corps of Engineers certified wetlands; property boundary surveys; existing buildings, structures and utility surveys; significant tree surveys; all data referenced to the SC State Plane Coordinate system, etc. The Architect shall not be responsible for survey accuracy.
 - 12.7.1.2.2 Testing, submittal and application fees, if required.
 - 12.7.1.2.3 Documentation pertinent to previous planning efforts, zoning and other regulatory agencies.
 - 12.7.1.2.4 Environmental surveys, if needed;
 - 12.7.1.2.5 Wetland boundary surveys and wetlands or pond enhancement / impact permitting;
 - 12.7.1.2.6 Archaeology surveys and remediation;
 - 12.7.1.2.7 Front end bid documents and preparation of contracts for construction.

Walterboro, SC Park Improvements – Exhibit A
Article 12

- 12.8 Amend Article 7 "Copyrights and Licenses" to Include the following:
 - 12.8.1 Add the following Article 7.5:
 - 12.8.1.1 The Owner shall be free to use said instruments of Service for Owner's purposes, but shall not assign, delegate, sublicense, pledge or otherwise transfer said instruments of services, including any underlying copyright or license granted herein, to another party for use by any party. However, the Owner may use the Construction Documents for future additions of alterations to this Project, but not as a prototype to be used on another site, without the written permission of the Architect or his assigns. The Owner's privilege to use said instruments of Service extends to their use with and by other architects on Owner's projects only, provided that the Architect has been compensated for re-use of said instruments of Service in accord with this Agreement and subsequent amendments. With reasonable compensation, the Architect cannot withhold his permission to re-use the documents by the Owner.
 - 12.8.1.2 Reuse or modification of any such documents by Client, without Consultants written permission, shall be at Client sole risk, and Client agrees to indemnify and hold Consultant harmless from all claims, damages and expenses, including attorneys fees, arising out of such reuse by Client or by others acting through Client.

- 12.9 Article 11 "Compensation":
 - 12.9.1 Amend Article 11.1: Compensation for services shall be as outlined below, plus reimbursable expenses:
 - 12.9.1.1 Compensation for basic services including Design Development through Construction Document Services shall be provided for a stipulated sum amount based on the program elements included in the Comprehensive Park Master Plan Study as outlined below, plus reimbursable expenses. Payments for each phase shall be as follows:
 - 12.9.1.1.1 Design Development Services \$40,600.00
 - 12.9.1.1.2 Construction Document Services \$56,900.00
 - Total DD and CD Services \$97,500.00
 - 12.9.1.2 Compensation for basic services including Bidding and Construction Phase Services shall be provided for a stipulated sum amount based on the program elements included in the Comprehensive Park Master Plan Study as outlined below, plus reimbursable expenses. Payments for each phase shall be as follows:
 - 12.9.1.2.1 Bidding Phase Services \$13,000.00
 - 12.9.1.2.2 Construction Phase Services \$52,000.00
 - Total Bidding and Construction Phase Services \$65,000.00
 - 12.9.1.3 Compensation for basic services for Permitting and Submittal Services shall be provided for a stipulated sum amount based on the program elements included in the Comprehensive Park Master Plan Study as outlined below, plus reimbursable expenses. Payments shall be as follows:
 - 12.9.1.3.1 Permitting & Submittal Services \$12,000.00
 - 12.9.1.4 Costs of additional services for additional program elements shall be based on the construction cost of all additional elements as indicated by

Walterboro, SC Park Improvements – Exhibit A
Article 12

the successful bidder and/or the estimated construction costs of items not bid. Compensation for additional Owner provided items included in the design process will be based on estimated construction costs, provided by the consultant. Owner provided items shall include the fair market value of purchase, mark-ups, labor, materials, overhead and installation cost as if bid by contractor.

- 12.9.1.5 Fees for additional Design Development and Construction Document Services shall be based on a percentage equivalent to 6.0% of the cost of additional program elements as outlined in 12.9.1.5 above and over the construction estimate of \$1,623,800.00 in the Comprehensive Park Master Plan Study, plus reimbursable expenses.
- 12.9.1.6 Fees for additional Construction Phase Services beyond eight months, services will be provided on an hourly basis based on hourly rates or on a monthly basis at \$6,800.00 per month which includes 2 additional site meetings and associated document preparation and processing per month, plus reimbursable expenses.
- 12.9.1.7 Reimbursable expenses are in addition to the Compensation for Basic and Additional Services and include actual expenditures made by WPI, its employees, or professional consultants in the interest of the Project shall be billed at a rate of a multiple of one and one fifteenth (1.15) times the amount expended. Mileage will be billed at the current IRS rate. Reimbursable expenses for basic services are estimated, though not guaranteed to be in the range of \$15,000.00.
- 12.9.2 For all services, monthly billing shall be forwarded based the percentage of WPI's work completed and are due when received and accepted by the Client. Since an early sitework package will be part of this project, multiple phases of services will be underway and billed for percent complete simultaneously.
- 12.9.3 The total limit of liability borne by WPI, its associates, successors, assigns and legal representatives under this agreement shall not exceed the amount of compensation already paid to WPI at the time of any such accusation.
- 12.9.4 If the Contract time for Construction is exceeded beyond eight months then compensation for Services performed by Partners, Principals, Employees and Professional Consultants required to complete administration of the Construction Contract shall be computed as set forth in Additional Services.

END OF ARTICLE 12

Exhibit B



Agreement Terms and Conditions / Hourly Rates

To: Mr. Jeffrey V. Lord
City of Walterboro
Re: City of Walterboro, SC – Park Improvements

Date: August 15, 2011

Wood+Partners (WPI) shall provide planning and landscape architectural services, based on the attached proposal under the terms and conditions outlined below.

- 1. For additional services provided on a time and material / hourly basis, compensation shall be at the following hourly rates, effective January 1, 2007 (fees for additional services will be negotiated with City prior to beginning work):

Partner	\$185.00
Principal	\$145.00
Senior Project Manager/Associate	\$125.00
Senior Project Manager	\$120.00
Project Manager/Associate	\$115.00
Project Manager/Landscape Architect/Designer	\$100.00
Landscape Architect/Planner	\$ 90.00
Project Planner	\$ 80.00
Technician	\$ 65.00
Administrative/Clerical	\$ 50.00

- 2. All project related reimbursable expenses (i.e., reproduction, copies, plots, postage, delivery, fax, telephone, renderings, accommodations, meals, travel, etc.) in connection with this project will be billed to the client at 1.15 times their cost. Auto mileage will be billed at the rate allowed by the IRS.
- 3. Upon execution of this agreement Client shall identify persons whom are responsible for approval and processing of WPI's invoices and identify timing of such approvals and processing.
- 4. Upon request, updates on time incurred and general account status may be obtained weekly or monthly at Client's expense.
- 5. WPI may require interim lump sum payments.
- 6. Invoices are due upon receipt. Payment shall be considered overdue after thirty (30) days from date of invoice.
- 7. If Client for any reason fails to pay WPI's invoices within 30 days of date of invoice, WPI has the right to cease work on the project and Client shall waive any claim against WPI for cessation of services. WPI shall retain all work products until outstanding payment in full is received.
- 8. In the event any invoice has not been paid in 60 days, WPI shall seek appropriate alternative actions to secure payment due.
- 9. Any dispute arising from or out of this Agreement shall be resolved in a Federal or State Court of competent jurisdiction and venue in Colleton County, South Carolina. Unless otherwise provided, this Agreement shall be governed by the law of South Carolina. WPI shall be reimbursed all cost incurred in collecting overdue accounts under this agreement including legal and/or attorneys' fees.

Name: Mr. Jeffrey V. Lord
City of Walterboro – Park Improvements
Date: August 15, 2011
Page: 2 of 2



10. Fees for additional consultant costs including but not limited to Surveying, Soils and Environmental Services will be negotiated with the City if needed.
11. The client will provide complete and accurate information and participate in reviews, minimizing time and expense for WPI and the Client. Client will designate person(s) to whom WPI is responsible and Client will remunerate in a timely manner. When the Client authorizes designated person(s) to act for it, the Client agrees to be bound to the actions taken or requested by that person. If Client is a corporation, the designated individuals shall be jointly and severally obligated to comply with the terms herein.
12. The terms of this agreement are not contingent on financing, sales or other performance based criteria.
13. Termination of this agreement or renegotiations may be effected by either party giving written notice; Client must also comply with terms of compensation herein stated.
14. Work products (such as sketches, plans, diagrams, documents, reports, etc.) produced under this agreement are instruments of service and shall remain the property of Wood+Partners Inc and shall be used by the City for only the use intended.

Wood+Partners Inc.

Owner

City of Walterboro

A handwritten signature in black ink, appearing to read 'Mark L. Baker', is written over a horizontal line.

,LS

Accepted

,LS

Name: Mark L. Baker, ASLA

Name: Jeffrey V. Lord

Title: Partner

Title: City Manager

Date: August 15, 2011

Date: _____

Exhibit C

**Park Master Plan Summary
Statement of Probable Costs
City of Walterboro, South Carolina
February 16, 2011**



Item	Description	Quantity	Units	Unit Price	Total
A. Doodle Hill Park					
1.	Short Term Recommendations - 1-5 Years				\$68,316
2.	Long Term Recommendations - 5-10 Years				\$33,660
	Total Doodle Hill Park				\$101,976
B. Forest Hills Tennis Park					
1.	Short Term Recommendations - 1-5 Years				\$86,044
2.	Long Term Recommendations - 5-10 Years				\$73,810
	Total Doodle Hill Park				\$159,854
C. Gladys Whiddon Park					
1.	Short Term Recommendations - 1-5 Years				\$373,650
2.	Long Term Recommendations - 5-10 Years				\$55,000
	Total Doodle Hill Park				\$428,650
D. Gruber Street Park					
1.	Short Term Recommendations - 1-5 Years				\$165,616
2.	Long Term Recommendations - 5-10 Years				\$33,660
	Total Doodle Hill Park				\$199,276
E. Mayfield Terrace Park					
1.	Short Term Recommendations - 1-5 Years				\$67,378
2.	Long Term Recommendations - 5-10 Years				\$82,157
	Total Doodle Hill Park				\$149,535
F. Pinckney Park					
1.	Short Term Recommendations - 1-5 Years				\$239,707
2.	Long Term Recommendations - 5-10 Years				\$344,795
	Total Doodle Hill Park				\$584,502
Summary of All Costs					
1.	Short Term Recommendations - 1-5 Years				\$1,000,711
2.	Long Term Recommendations - 5-10 Years				\$623,082
	Total Doodle Hill Park				\$1,623,793

Note: Costs outlined above represent conceptual estimates only and do not include property acquisition, design fees, surveying, permitting or testing fees.

City of Walterboro

South Carolina

Walter Street Options – Assessment & Recommendations

August 18, 2011

Wood+Partners and BP Barber were asked to evaluate the possibility of converting North Walter Street in Downtown Walterboro from one-way to two-way traffic. The following comments reflect an assessment of Options 1, 2 & 3 presented to Council on July 27 as well as the current design configuration reflected in WPI's Arborscape design documents.

Options 1 & 2 – Keep existing curbs and sidewalks and convert to two way traffic

Pros:

- Two way traffic
- Minimal disruption to existing curb and storm drainage infrastructure
- Parallel parking and tree plantings on east side or west side of street
- Option 1 places parallel parking and trees on east side which requires smaller trees due to overhead power lines
- Option 2 preserves parking and trees on west side and allows for larger trees due to power line on east side
- Both options would cost less than option 2-B and be in the range of \$75,000 to \$100,000 to implement, depending on which options is selected

Cons:

- Options 1 and 2 lose 14 or 15 parking spaces
- Sidewalks next to travel lanes are narrow and adjacent to buildings creating unsafe pedestrian environment
- Option 1 and 2 have smaller and fewer trees
- Option 2 requires realignment of street at Washington Street to improve alignment with South Walter Street
- Large vehicle turning movements heading north will be restricted and difficult

Option 2-B – Keeps parallel parking on West side and move curbs on East side in to create wider sidewalks for safer pedestrian environment and allow for street trees on both East and West side of street and convert to two way traffic

Pros:

- Two way traffic
- Somewhat safer pedestrian environment with 8 foot sidewalk on east side
- Trees on both sides of street

Walterboro, South Carolina
Walter Street Options – Assessment & Recommendations
August 18, 2011

Cons:

- Loose 14 parking spaces
- Sidewalk next to travel lane without parallel parking is not as safe as current proposed option, but better than options 1 and 2
- Large vehicle turning movement heading north will be restricted and difficult
- Expensive to implement due to need to realign curbs and storm drainage infrastructure and cost in the range of \$245,000

Current Proposed Plan in Arborscape Design Documents – Keeps one way traffic and parallel parking on both sides of street

Pros:

- Keeps additional 14 or 15 on-street parking spaces
- Allows for trees on both sides of street
- Creates safer pedestrian environment with parallel parking between sidewalks and pedestrians
- Least expensive alternative
- No north bound large vehicle traffic

Cons:

- One way traffic
- Narrow sidewalks

Design Team Recommendations:

The design team does not recommend Options 1 or 2 due to the unsafe pedestrian environment, the loss of parking and fewer street trees.

Option 2-B creates a somewhat safer pedestrian environment and, but not as safe as the current design proposal.

Any gain in value afforded by two-way traffic may well be offset by the loss of on-street parking.

The costs to modify the street are high do not reflect possible addition of an off-street parking lot.

Due to the comments above, the design team recommends that the City proceed with the current proposed plan with one-way traffic and parking on both sides of the street.

Telephone: 843-549-2545

Fax: 843-549-9795

TDD Relay: 1-800-735-2905

City of Walterboro

242 Hampton Street

Walterboro, South Carolina 29488

Mailing Address:

Post Office Box 709

Walterboro, South Carolina 29488-0008

To: Mayor and Council

CC: Jeff Lord, City Manager

From: Carolyn Powell, Parks Director CP

Date: August 17, 2011

Re: Bids Received for 1500 yards Cypress Mulch

We solicited bids for supplying 100% Cypress Mulch for our Interchanges 53 and 57 beautification project. We only received 2 bids matching the 100% Cypress Mulch requirement.

The Companies submitting bids were Sims Bark out of Bowman, SC and Old Castle Lawn & Garden located here in Walterboro. The 2 bids received were \$15.50 per yard for a 1500 yard purchase.

It is my recommendation that we accept the local bid price from Old Castle lawn and Garden for the \$15.50 per yard, 1500 yard purchase.

Carolyn

From: Charlene Gipson [charlene@simsbark.com]
Sent: Thursday, March 24, 2011 9:34 AM
To: cpowel@walterborosc.org
Cc: infolcim@gmail.com
Subject: Price per yard on Cypress

The price delivered for Pure Cypress is 15.50 per yard.

Thanks,

Charlene Gipson

*Sims Bark
Bowman Plant
charlene@simsbark.com
(803) 829-1200
(803) 829-1300 fax*

Carolyn

From: Merriman, Devon [Devon.Merriman@oldcastleapg.com]
Sent: Tuesday, March 22, 2011 9:50 AM
To: cpowell@WalterboroS.C.org
Subject: 1500 yds 100% Cypress Mulch

Carolyn Powell, as per our conversation
15.50 per yard
100 yds per truck
Approved to the City of Walterboro

Telephone: 843-549-2545

Fax: 843-549-9795

TDD Relay: 1-800-735-2905

City of Walterboro

242 Hampton Street

Walterboro, South Carolina 29488

Mailing Address:

Post Office Box 709

Walterboro, South Carolina 29488-0008

To: Mayor and Council

CC: Jeff Lord, City Manager

From: Carolyn Powell, Parks Director *CP*

Date: August 17, 2011

Re: Bids Received for Mulching at Exits 53 and 57

We solicited bids for the installation of mulch at Interchanges 53 and 57 for our beautification project. Due to the specific nature of the work, bidder response was very low. We received 2 bids from mulch blowing companies and 1 bid from a local landscaper. The local landscaping companies were contacted by phone and asked to participate in the bidding. That resulted in only 1 local company submitting a bid.

The apparent low bidder is Low Country Mulch from Mt. Pleasant SC. They submitted a bid in the amount of \$19,500. We have a local company, Harrison Enterprises, who submitted a bid in the amount of \$20,250. There is a difference of \$750.00 between the local bid and lowest bid.

It is my recommendation that we accept the local bid, Harrison Enterprises for this project.

Estimate

Harrison Enterprises
 Andy Harrison
 106 James ST.
 Walterboro, SC 29488

Date	Estimate #
3/31/2011	126

Name / Address				Project
City of Walterboro PO Box 709 Walterboro, SC 29488				
Description		Qty	Cost	Total
install mulch supplied buy City on job site		1,500	13.50	20,250.00
			Total	\$20,250.00
Phone #	Fax #	E-mail		
(843) 909-1122	(843) 549-5494	andy@lowcountryscapes.com		

LOWCOUNTRY MULCH, INC
 1135 HIGHWAY 41
 MT. PLEASANT, SC 29466

QUOTATION

Quote Number: 030911
 Quote Date: Mar 9, 2011
 Page: 1

Voice: 843-971-7010
 Fax:

Quoted To:
City of Walterboro

Customer ID	Good Thru	Payment Terms	Sales Rep
City of Walterboro	4/8/11	Due at end of Month	

Quantity	Item	Description	Unit Price	Amount
1,500.00	BARK BLOWING	BARK BLOWING	13.00	19,500.00
			Subtotal	19,500.00
			Sales Tax	
			TOTAL	19,500.00

LCR Construction, Inc.

P.O. Box 400
Port Royal, SC 29935
843-522-3955
843-521-9885 Fax

lcrconst@hargray.com

Estimate

Date	Estimate #
3/30/2011	1909

Name / Address
City of Walterboro Carolyn Powell P.O. Box 709, Walterboro SC

30 Day Quote

Description	Quantity	Cost	Total
EXIT 53 & EXIT 57: Blowing Installation only picking up City purchased mulch from Oldcastle per yard	1,500	16.00	24,000.00
SC Sales Tax		7.00%	0.00

We appreciate this opportunity and for your interest in this proposal!

Please sign for approval: _____

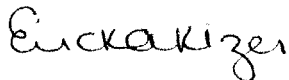
**NAIFA/Walterboro
C/O Bryan McCollum
Po Box 1814
Walterboro, SC 29488**

August 11, 2011

Jeff Lord, City Manager;

We are requesting permission to hang our banner for Life Insurance Awareness Month in September. We would like to hang it the week of September 12-16. If this week is unavailable please let us know which week in September will be available. Our banner has also been designed to meet the city banner codes and was approved last year.

Sincerely,



Ericka Kizer, Secretary NAIFA/Walterboro

CC: Bryan McCollum, LUTC, NAIFA/ President