



CONTRACT DOCUMENT

**CHARLESTON COUNTY PARK & RECREATION COMMISSION
861 Riverland Drive
Charleston, South Carolina 29412**

CONSULTANT SERVICES

AGREEMENT

made as of month/date/year

BETWEEN the Owner: Charleston County Park & Recreation Commission
("CCPRC") 861 Riverland Drive, Charleston, SC 29412

and the Consultant: Company:
Address:
Contact:
Phone:
Email:

CCPRC'S Project Number: **2021-009**

For the following Project: *Consultant Services for Wiltown Community Center*

The Owner and Consultant agree as set forth below.

ARTICLE 1
CONSULTANT'S RESPONSIBILITIES

The Consultant acknowledges that it has thoroughly examined and understands the requirements of Request for Proposal (RFP) No. 2021-009 issued by the Charleston County Park and Recreation Commission ("CCPRC") for consulting services for Wiltown Community Center, 5779 Parkers Ferry Road, Adams Run SC. The general scope of work is attached hereto as an Attachment (or listed below). Consultant agrees that services, which are required to complete the Tasks set forth in the RFP, and to otherwise meet the intent of the RFP #2021-009 are included in Consultant's lump sum fee.

Consultant agrees to complete all work in accordance with the work required for the RFP, and all work reasonably required in conjunction with scope of work and the RFP for the lump sum price in the not to exceed amount of \$ _____ Dollars, including all reimbursable expenses, direct and indirect personnel expenses, all anticipated equipment expenses, all photographic reproductions and reproduction services, and all materials and services of any kind required under the Contract. Consultant further acknowledges that the price shall not be adjusted without the express, written authorization of CCPRC and Consultant assumes all risk and responsibility for incurring additional cost or services beyond the scope of work, including reimbursable expenses, without first securing written authorization and agreement from CCPRC's representative to the terms and conditions of providing the additional services.

The following documents are attached hereto and incorporated herein by reference; however, in the case of any ambiguities with attached documents, CCPRC's contract and Procurement Policy will apply.

ATTACHMENTS: PROPOSAL AND FEE PROPOSAL

The RFP submitted and any signed addenda shall be incorporated and become part of the agreement when signed by CCPRC.

For this contract the term "Consultant" shall refer to Architect, Engineer, Surveyor or Landscape Architect. "Owner" shall refer to CCPRC.

The Contract is governed by CCPRC Procurement Policy, which may be obtained by request. CCPRC's Procurement Policy shall prevail over any conflicting provisions of the contract, including the special or supplementary conditions of the contract and the general conditions of the contract.

1.1 CONSULTANT'S SERVICES

1.1.1 The Consultant's services consist of those services performed by the Consultant, Consultant's employees and Consultant's subcontractors as enumerated in Articles 2 and 3 of this Agreement and any other services included in Article 11.

1.1.2 The Consultant's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work schedule outlined in RFP or schedule agreed between Consultant and CCPRC. The Consultant shall submit for the Owner's approval a schedule for the performance of the Consultant's services which may be adjusted as the Project proceeds and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Consultant.

1.1.3 It is the responsibility of the Consultant to notify the Owner in writing if any additional surveys, and/or studies are required or advisable to accomplish the agreed task/project upon approval by the Owner. If any other fees will be associated with this additional work, the Consultant must obtain the Owner's written approval, prior to performing this work.

1.1.4 Services are for the complete project, including the entire duration of the construction process, including significant schedule modifications and close-out. Warranty Administration Services, including a warranty walk-through at the end of the warranty period, continue for 365 days after Project Close-Out date to determine all warranty work has been satisfactorily performed; Consultant will identify any claims that should be made under the 12 month warranty period. In the event any warranty claims identified the Consultant will continue to oversee the warranty work throughout the warranty period as a part of the basic services. The observations shall be communicated in writing and specifically list any uncompleted warranty work.

1.1.5 The Consultant shall furnish all sub-consulting services, as needed, including surveys, civil, structural, mechanical, geotechnical engineering and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents as part of this contract.

1.1.6 Submittals and presentation files shall be provided in a PDF format and one paper copy.

ARTICLE 2 **SCOPE OF CONSULTANT'S BASIC SERVICES**

2.1 DEFINITION

2.1.1 The Consultant's Basic Services consist of those services described in Article 2 and include normal consultant services.

2.2 CONCEPTUAL DESIGN REVIEW

2.2.1 The Consultant shall review and refine the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

2.2.2 The Consultant shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 5.2.1.

2.2.3 The Consultant shall perform an evaluation of the project site to determine current conditions and deficiencies.

2.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Consultant shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

2.2.5 The Consultant shall review with the Owner alternative approaches to design and construction of the Project.

2.2.6 The Consultant shall submit to the Owner a preliminary estimate of Permitting and Construction Cost based on current area, volume or other unit costs.

2.3 DESIGN DEVELOPMENT

2.3.1 The Consultant shall prepare for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, and electrical systems, materials and other such elements as may be appropriate. The Consultant shall submit to the Owner an estimate of Permitting and Construction Costs based on current area, volume or other unit costs. The estimate shall be used to determine the fixed limit of construction under Article 5.2.4.

2.3.1 Based on CCPRC budget, a plan for phasing program features may be required. This phase will outline a schedule for each stage of the project, indicating time line to completion with milestone progress points and proposed dates for submittals. The consultant is to manage and keep the schedule updated.

2.4 CONSTRUCTION DOCUMENTS

2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Consultant shall prepare, review, and revise, subject to Owner's approval, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. The construction drawings and specifications shall comply with all applicable codes and standards, which include following all Local, County, State and Federal codes and regulations, especially in regards to Building codes, Life Safety Codes and the American with Disabilities Act.

2.4.2 Consultant shall assist the Owner in the preparation of the necessary technical information, project description, seek and obtain approval of any special or supplementary considerations and general conditions from CCPRC prior to incorporating such changes into the bid documents. All forms shall be prepared in accordance with and are governed by CCPRC's Procurement Policy.

2.4.3 The Consultant shall identify requirements for any permits or documentation required by any governmental authority and shall assist the Owner in filing documents required for the approval of governmental authorities having jurisdiction over the Project.

2.4.4 Contract documents at the 50% and 90% complete stage for the construction of the facility and its support components must be reviewed and available for mark-up by CCPRC staff, prior to final preparation of documents. Final copies of construction documents must be received by CCPRC prior to bidding.

2.5 BIDDING OR NEGOTIATION

2.5.1 The Consultant, shall be required to review and comply with CCPRC's Procurement Policy and assist the Owner in preparing bid documents by providing technical plans and specifications, project description (scope of work), approved special considerations for inclusion in the solicitation/bid, attend pre-bid meetings and document contractors questions and meeting minutes.

2.5.2 The Consultant shall assist Owner with negotiations of the construction contract as a technical advisor of the plans and specifications and in regards to opinion of realistic pricing and quality assurance at the request by CCPRC..

2.6 CONSTRUCTION ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Consultant's responsibility to provide Basic Services for the Construction under this Agreement commences with the award of the Contract for Construction and terminates upon completion of the Consultant's obligation pursuant to Article 1.1.4.

2.6.2 The Consultant shall provide administration of the Contract for Construction as set forth in the Agreement between CCPRC and the Contractor. The Consultant shall prepare written minutes of project meetings held pursuant to the General Conditions of the Contract for Construction.

2.6.3 Duties, responsibilities and limitations of authority of the Consultant shall not be restricted, modified or extended without written agreement of the Owner and the Consultant with consent of the Contractor, with which consent shall not be unreasonably withheld.

2.6.4 The Consultant shall advise and consult with the Owner during construction until final payment to the Contractor is paid. The Consultant shall have authority to act on

behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written instrument.

2.6.5 The Consultant shall visit the site at intervals appropriate to the stage of construction or as otherwise agreed by the Owner and the Consultant in writing to become generally familiar with the progress and quality of the Work completed and to determine if the Work is being performed in accordance with the Contract Documents. However, the Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Based on the on-site observations, the Consultant shall keep the Owner informed of the progress and quality of the Work, and shall use best efforts to endeavor and guard the Owner against defects and deficiencies with the Work.

2.6.6 The Consultant shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibilities under the Contract for Construction. The Consultant shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents. The Consultant shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

2.6.7 The Consultant shall at all times have access to the Work

2.6.8 Communications by and with your subcontractors shall be through the Consultant. Consultant shall work closely with other contractors to promote good communication of all planning and construction coordination.

2.6.9 Based on the Consultant's observations and evaluations of the Contractor's Applications for Payment, the Consultant shall review and recommend the amounts due the Contractor. Consultant shall comply with CCPRC's Procurement Policy with respect to pay applications.

2.6.10 The Consultant's recommendation for payment shall constitute a representation to the Owner, based on the Consultant's observations at the site as provided in Subparagraph 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Consultant. The recommendation for payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the recommendation for payment shall not be a representation that the Consultant 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.

2.6.11 The Consultant shall notify and advise the Owner if the Consultant discovers Work which does not conform to the Contract Documents. Whenever the Consultant considers it necessary or advisable for implementation of the intent of the Contract Documents, the Consultant will advise the Owner if additional inspection or testing of the Work is required.

2.6.12 The Consultant shall review and recommend approval 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 provided and the design concept expressed in the Contract Documents. The Consultant's action shall allow sufficient time for adequate review and reasonable promptness to not cause delay in the Work or in the construction of the Owners separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Consultant, of construction means, methods, techniques, sequences or procedures. The Consultant's recommendation of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Consultant shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

2.6.13 The Consultant acknowledges that the Owner is obligated to consider alternates proposed by contractors as being equal to those specified. It shall be the Consultant's responsibility, and included in Consultant's basic services to evaluate, advise and to fully exercise these considerations in a timely manner.

2.6.14 At the Owner's request, the Consultant shall draft Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Owner, for the Owner's approval and execution in accordance with the Contract Documents and the CCPRC Procurement Policy. The Consultant shall assist the Owner in the final negotiation of any Change Orders with the Contractor, if deemed necessary.

2.6.15 The Consultant shall conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, shall receive 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 shall recommend for payment upon compliance with the requirements of the Contract Documents.

2.6.16 At the completion of the project, the Consultant will participate in an exit interview to review Construction As-Built documents and update any revisions made. The Consultant shall annotate on both CADD drawings and PDF formats the as-built conditions and provide this service as a part of the basic compensation. The Consultant shall provide the Owner with a flash drive of digital files of entire bid set, including, but not limited to all drawings and specifications by the Consultant and/ or any and all subcontractors.

ARTICLE 3 **ADDITIONAL SERVICES**

3.1 GENERAL

3.1.1 Additional services shall only be provided if authorized or confirmed in writing by the Owner prior to the additional services.

3.1.2 CCPRC reserves the right to unilaterally change this Agreement at any time and such change shall not affect the validity of this Agreement. Work beyond the basic Scope of Services shall be subject to a Change Order for the additional services.

ARTICLE 4 **OWNER'S RESPONSIBILITIES**

4.1 The Owner shall provide information regarding requirements for the Project, including a 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. CCPRC shall provide information the Consultant requires to perform its work. CCPRC shall cooperate with the Consultant and pay the Consultant in accordance with this Agreement.

4.2 The Owner shall establish and update an overall budget for the Project, including the Construction Cost, the Owner's other costs and any associated costs recommended by Consultant to complete the Project.

4.3 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Consultant in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's services.

4.4 The Owner shall furnish any available information in the Owner's possession such as existing surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site.

4.5 The Owner shall have available its Procurement Policy and all legal, accounting and insurance counseling services as may be necessary at any time for the Project,

including auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

4.6 The proposed language of certificates or certifications requested of the Consultant or Consultant's subcontractors shall be submitted to the Consultant for review and approval at least fourteen (14) days prior to execution. The Owner shall not request certifications that would require knowledge or services beyond the scope of this Agreement.

ARTICLE 5 **CONSTRUCTION COST**

5.1 DEFINITION

5.1.1 The Construction Cost shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Consultant.

5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Contractor and equipment designed, specified, selected or specially provided for by the Consultant, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction.

5.1.3 Construction Cost does not include the compensation of the Consultant and Consultant's subcontractors, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 4.

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

5.2.1 Evaluations of the Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Consultant, represent the Consultant's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Consultant nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly the Consultant cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Consultant.

5.2.2 The fixed limit of Construction Cost shall be established as the Consultants estimate under Article 2.3.2. The Consultant may include options 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, and may make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit.

5.2.3 If the Bidding or Negotiation has not commenced within ninety (90) days after the Consultant submits the final Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the final Construction Documents to the Owner and the date on which bids are sought.

5.2.4 If the fixed limit of Construction Cost as established under Article 2.3.2 is exceeded by 10%, the Owner shall:

- .1 give written approval of an increase in such fixed limit;
- .2 authorize re-bidding or renegotiating of the Project within a reasonable time, at no additional cost to CCPRC;
- .3 if the Project is abandoned, terminate in accordance with Paragraph 8.3; or
- .4 cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

5.2.5 If the Owner chooses to proceed under Clause 5.2.4.4., the Consultant, without additional charge, fee or compensation shall modify the Contract Documents as necessary to comply with the fixed limit of Construction Cost and continue to perform and complete all other services in the original Scope of Work in this Agreement at no additional fee or cost to CCPRC.

ARTICLE 6 **OWNERSHIP OF CONSULTANT'S WORK PRODUCT**

6.1 The documents and materials prepared by the Consultant for this Project are for CCPRC's use. CCPRC shall have sole ownership of such documents to include making reproducible copies for its use and information in connection with follow-up contracts for design services, further planning, construction, or requests of state, local, or federal governmental agencies or other uses contemplated in the RFP.

ARTICLE 7 **DURATION OF CONTRACT**

7.1 Duration of Contract, the initial contract period shall commence with award of Contract. Task completion times are identified below:

- a. Design Development, 120 days*
- b. Permitting – 180 days*
- c. Construction Documents – 135 days*

- d. Construction Administration & Project Close-out –280 days*
- e. Warranty Period – 365 days*

Permitting, Bidding and Start of Warranty are dependent on permit, Commission and CO approval respectfully.

All prices, terms and conditions shall remain firm

ARTICLE 8
MISCELLANEOUS PROVISIONS

8.1 This Agreement shall be governed by the laws of the State of South Carolina. CCPRC and the Consultant, bind themselves, their partners, successors and assigns, and legal representatives to this Agreement. The Consultant shall not assign or subcontract any portion of this Agreement without the written consent of CCPRC. This Agreement represents the entire and integrated agreement between CCPRC and the Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both CCPRC and the Consultant. Nothing contained in this Agreement shall be deemed to create a contractual relationship with or cause of action in favor of a third party against CCPRC or the Consultant.

8.2 CCPRC may, at any time, by written order designated or indicated to be an addendum/change order, unilaterally make any change in the work within the general scope of the Contract without invalidating this Agreement. No order, statement, or conduct of CCPRC's representatives shall be treated as a change under this Contract, unless so designated as a written addendum/change order.

8.3 The Consultant covenants with warranty that all work performed under this Contract shall be performed in a skillful, workmanlike and professional manner in accordance with the customs and standards of the industry with professional care. All plans prepared by the Consultant and drawings shall be accurate and fit for their intended purpose. The Consultant agrees to comply with all state, local and federal laws bearing upon the performance of the work. The Consultant shall obtain and secure any licenses and/or permits to comply with any federal, state, local or municipal laws, codes, or regulations required in connection with the Consultant's work. The Consultant shall similarly be responsible for and bear all risk of all damages to persons or property that occurs as a consequence of its fault or negligence. The Consultant assumes all risk of loss and damage to all materials The Consultant provides under this Contract until delivery and acceptance of the entire work by CCPRC. The Consultant shall carry insurance in the amounts specified in the attached schedule.

8.4 CCPRC may undertake or award other contracts for additional work with the Project. Consultant shall fully cooperate and with earnest integrate such other contractors or consultants CCPRC employs. The Consultant shall not commit or permit any act which will interfere with the performance of work by any other contractor.

8.5 The Consultant agrees CCPRC and/or its authorized agents and representatives, have three (3) years from final payment date full access and right to examine or audit any directly pertinent records, documents, or any other information maintained by the Consultant involving transactions related to this Contract. The Contract price includes all applicable federal, state, and local taxes and dues.

8.6 The Consultant acknowledges and assumes full responsibility for strict compliance with the terms and conditions of this Agreement, the RFP and Scope of Work, and agrees to indemnify and hold harmless CCPRC for any damages arising from the Consultant's failure to comply with the terms and conditions of this Agreement (including attorney's fees and costs).

8.7 The Consultant shall maintain professional and general liability insurance and provide acceptable proof of such insurance to CCPRC in an amount not less than \$1,000,000.00 in coverage.

8.8 The parties shall not be responsible for delays caused by reasons beyond a party's reasonable control and without the fault or negligence of the delayed party.

ARTICLE 9
BASIC COMPENSATION

9.1 FOR BASIC SERVICES, as described in Article 2, and any other services included as part of Basic Service. Basic Compensation shall be for the following:

<i>Design Development</i>	\$ _____
<i>Construction Documents & Permitting</i>	\$ _____
<i>Bidding or Negotiating Assistance</i>	\$ _____
<i>Construction Administration</i>	\$ _____
Total	\$ _____

ARTICLE 10
COMPENSATION FOR ADDITIONAL SERVICES

10.1. FOR ADDITIONAL SERVICES OF THE CONSULTANT, as described in Article 3 and compensation shall be computed as follows:

Hourly Rate plus Reimbursables or Negotiated Lump Sum for Services. Charleston County Park and Recreation Commission will not be obligated to pay any charges for additional professional services unless approved in writing by the Charleston County Park and Recreation Commission prior to request.

Reimbursables associated with additional services shall be paid at direct cost in accordance with Article 10.3.

10.2 REIMBURSABLE EXPENSES

Reimbursables shall be paid at direct expense. In accordance with Article 11.2, the Consultant's fixed reimbursable budget is established as \$_____ for Consultant Services for Wiltown Community Center. Should the fixed reimbursable budget require adjustment as a consequence of additional work or services requested by the Owner, the Consultant shall notify per Owner and request an adjustment in writing. The Consultant bears the right for any expenses it incurs in excess of the Owner's fixed reimbursable budget. The Consultant shall submit proof of direct expenses which are subject to periodic review and audit of CCPRC.

10.3 The price specified shall include all taxes and duties of any kind levied by federal, state, municipal, or other governmental authority, which either party is required to pay with respect to the materials or services covered by this Agreement. If the letter of authorization accompanying these terms and conditions allows the payment of "reimbursables", they shall be paid at Consultant's actual cost and subject to audit by CCPRC.

10.4 Out of state Contractors/Consultants are required to complete form I-312, Nonresident Taxpayer Registration Affidavit Income Tax Withholding form.

ARTICLE 11 **PAYMENTS TO THE CONSULTANT**

11.1 DIRECT PERSONNEL EXPENSE

11.1.1 Direct Personnel Expense is defined as the direct salaries of the Consultant's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

The Consultant shall account for such expenses using daily records and reports. CCPRC shall have the right to audit such expenses upon reasonable notice. At a minimum, invoices shall contain the identity of the provider of the services, the date of the services, a description of the services, indicating a percentage of the work completed and any applicable taxes.

11.2 REIMBURSABLE EXPENSES

11.2.1 The Consultant shall provide a fixed budget of reimbursable expenses. Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Consultant and Consultant's employees and consultants in the interest of the Project, as identified in the following Clauses. CCPRC shall have the right to audit such expenses upon reasonable notice.

11.2.2 Expense of transportation in connection with the Project expenses in connection with authorized out-of-town travel; long-distance communications and fees paid for securing approval of authorities having jurisdiction over the Project.

11.2.3 Expense of reproductions, postage and handling of Drawings, Specifications and other documents.

11.2.4 If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates.

11.2.5 Expense of renderings, models and mock-ups requested by the Owner.

11.3 PAYMENTS ON ACCOUNTS OF BASIC SERVICES

11.3.1 Subsequent payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each task of service, on the basis set forth in the Cost Proposal.

11.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

11.4.1 Payments on account of the Consultant's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Consultant's statement of services rendered or expenses incurred.

11.5 PAYMENTS WITHHELD

11.5.1 No deductions shall be made from the Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Consultant has been found to be liable.

11.6 CONSULTANT'S ACCOUNTING RECORDS

11.6.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative for audit and inspection at mutually convenient times.

ARTICLE 12 **GOVERNMENTAL RESTRICTIONS**

12.1 In the event any governmental restrictions may be imposed which would necessitate alteration of the material quality, workmanship, or performance of the items offered on this bid prior to their delivery, it shall be the responsibility of the successful Offeror to notify CCPRC at once, indicating in his letter the specific regulation which required an alteration. CCPRC reserves the right to accept any such alteration, including any price adjustments occasioned thereby, or to cancel the contract at no further expenses to the CCPRC.

ARTICLE 13
LEGAL REQUIREMENTS

13.1 Applicable provisions of all Federal, State, County and local laws, and of all ordinance, rules and regulations including the CCPRC Procurement Policy shall govern development; submittal and evaluation of bids received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a bid in response hereto and CCPRC and through its officers, employees and authorized representative, or any other person, natural or otherwise. Lack of knowledge by any bidder shall not constitute a recognizable defense against the legal effect thereof.

ARTICLE 14
ASSIGNMENT

14.1 Consultant shall not transfer, subcontract, or assign the performance required by this bid without the prior written consent of the CCPRC's Executive Director. Any Award issued pursuant to this proposal and monies which may become due hereunder are not assignable except with the prior written approval of the Executive Director.

ARTICLE 15
INDEMNIFICATION

15.1 Consultant shall indemnify, save harmless, and defend CCPRC, its officers, agents and employees from and against any claims, demands, or causes of action of whatsoever kind or nature arising out of error, omission, negligent act, conduct, or misconduct of Consultant, its agents, servants or employees in the provision of goods or the performance of services pursuant to this RFP and contract.

ARTICLE 16
QUALIFICATIONS OF OFFEROR

16.1 Proposals will be considered only from firms normally engaged in providing the types of commodities/services specified herein. CCPRC reserves the right to inspect the facilities, equipment, personnel, and organization, or to take any other action necessary to determine ability to perform in accordance with specifications, terms, and conditions. CCPRC will determine whether the evidence of ability to perform is satisfactory and

reserves the right to reject proposals where evidence or evaluation is determined to indicate inability to perform.

ARTICLE 17 **TERMINATION**

17.1 If, in the opinion of CCPRC, Consultant fails to perform or deliver product after reasonable notice or the Consultant willfully or negligently does not comply with specifications, requirements, terms and conditions of the Contract, CCPRC reserves the right to cancel the Contract by means of written notification.

17.2 In the event that the Consultant is terminated under this Article, the Consultant shall not be entitled to any further payments under this agreement. Consultant agrees to pay the owner the cost of obtaining other services. Consultant agrees to pay owner the excess cost of obtaining other services and pay promptly to the Owner, on demand, the full amount of such excess, including costs of collection, attorneys' fees, and interest thereon at the maximum legal rate of interest per annum until paid. Additionally, Owner shall have the right to terminate this Contract, by written notice, without Consultant being at fault, for any cause or for its convenience (including without limitation on public funds), and require Consultant to immediately stop work. In such event, Owner shall pay Consultant for the work actually performed in an amount proportionate to this Contract sum. Owner shall not be liable to Consultant for any other costs, nor for prospective, lost or anticipated profits on work not performed. Any default termination subsequently determined to have been erroneous, shall be treated as a termination for convenience.

A. For Convenience

The Procurement Coordinator, by advance written notice, may terminate this Contract when it is in the best interests of CCPRC. If this Contract is so terminated, the Contractor shall be compensated for all necessary and reasonable direct costs of performing the Work actually accomplished. The Contractor will not be compensated for any other costs in connection with a termination for convenience. The Contractor will not be entitled to recover any damages in connection with a termination for convenience.

This Agreement may be terminated by CCPRC for its convenience upon not less than seven (7) days written notice.

In the event of termination for convenience, the Architect shall be compensated for services performed prior to termination, together with any Reimbursable Expenses then due.

Termination Expenses are in addition to compensation for properly completed Basic and Additional Services, and include expenses which are directly attributable to termination. Termination Expenses shall be computed as a percentage of the total compensation for Basic Services and Additional Services earned to the time of termination, as follows:

- .1 Twenty percent (20%) of the total compensation for Basic and Additional Services earned to date if termination occurs before or during the DESIGN DEVELOPMENT; or
- .2 Ten percent (10%) of the total compensation for Basic and Additional Services earned to date if termination occurs during or after Construction Documents.

B. For Default

If the Consultant refuses or fails to perform the services or any separable part thereof in a timely or workmanlike manner in accordance with the Contract, or otherwise fails, in the sole opinion of CCPRC, to comply with any of the terms and conditions of the Contract deemed, in the sole opinion of CCPRC, to be material (including, without limitation, the requirement that Contractor obtain and maintain in force all necessary permits), such refusal or failure shall be deemed a default under this Contract. In the event of a default under this section, CCPRC shall have the right to terminate forthwith this Contract by written notice to the Consultant. In the event of such default, the advance notice period for termination is waived and the Contractor shall not be entitled to any costs or damages resulting from a termination under this section.

Whether or not the Consultant's right to proceed with the Work is terminated, it and its sureties shall be liable for any damage to CCPRC resulting from Consultant's default. Any wrongful termination for default shall be deemed by the Parties a termination for convenience.

C. Termination for Non-Appropriation of Funds

The Procurement Coordinator, by written advance notice, may terminate this Contract in whole or in part in the event that sufficient appropriation of funds from any source (whether a federal, state, county or other source) are not made or sufficient funds are otherwise unavailable, in either case, to pay the charges under this Contract. If this Contract is so terminated, the Contractor shall be compensated for all necessary and reasonable direct costs of performing the Work actually provided to the date of such termination. The Contractor will not be compensated for any other costs in connection with a termination for non-appropriation. The Contractor will not be entitled to recover any damages in connection with a termination for non-appropriation, including, but not limited to, lost profits.

D. Rights

The rights and remedies of CCPRC provided in this section are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE 18 **DISPUTES**

18.1 After the exhaustion of the remedies and procedures in the CCPRC Procurement Policy (incorporated herein by reference), the parties agree any disputes under this Agreement shall be resolved in Charleston County, South Carolina in a court of competent jurisdiction (non-jury proceedings).

ARTICLE 19
MODIFICATIONS

19.1 Any modifications or changes to any contract entered into as a result of this proposal must be by written change order with the same formality and of equal dignity prior to the initiation of any such change.

ARTICLE 20
INSURANCE

20.1 Prior to commencement of the project, the Contractor, at his expense, will procure insurance naming the Charleston County Park and Recreation Commission as an additional insured on the liability coverage and furnish certificate as to such, certifying the coverage as follows:

- A. All such coverage required by statute or regulation of Charleston County and the State of South Carolina.
- B. The Consultant shall maintain limits no less than the following:
 - 1. **GENERAL LIABILITY:** \$1,000,000 combined single limit per occurrence for bodily injury, property damage, and personnel injury with a \$1,000,000 general aggregate limit.
 - 2. **AUTOMOBILE LIABILITY:** \$1,000,000 combined single limit per accident for bodily injury and property damage with a \$1,000,000 aggregate limit.
 - 3. **WORKERS' COMPENSATION:** Statutory limits are required by South Carolina state law, and employer's liability limits of \$100,000 per accident.
 - 4. **PROFESSIONAL LIABILITY:** \$1,000,000 limit per claim. Professional shall obtain and maintain a professional liability insurance policy covering the performance of the professional services specified in this agreement. Evidence of such insurance shall be satisfactory in form and content to the owner, Charleston County. This coverage shall be maintained through the duration of this project and for a minimum of 1 year after substantial completion of the project.
- C. The required insurance policy at the time of issue must be written by a

Company licensed to do business in the State of South Carolina and acceptable to CCPRC.

ARTICLE 21
PROMPT PAYMENT- SUBCONTRACTOR

21.1 (1) Subject to the provisions on retainage provided in Paragraph (2) below, when a subcontractor has satisfactorily performed a work item of the subcontract, the Contractor must pay the subcontractor for the Work item within seven (7) Calendar Days of the Contractor’s receipt of payment from CCPRC. A subcontractor shall be considered to have “satisfactorily performed a work item of the subcontract” when CCPRC pays the Contractor for that Work item.

21.1 (2) The Contractor may withhold as retainage up to five (5%) percent of a subcontractor’s payment until satisfactory completion of all work items of the subcontract. “Satisfactorily completion of all work items of the subcontract” shall mean when CCPRC pays the Contractor for the last work item of the subcontract. The Contractor must release to the subcontractor any retainage withheld within seven (7) Calendar Days from the date the Contractor receives payment from CCPRC for the last work item of the subcontract.

21.1 (3) Prior to receiving payment of each monthly estimate, the Contractor shall certify to CCPRC that the construction estimate is complete and that all subcontractors have been paid for work covered by previous estimates.

21.1 (4) Failure to comply with any of the above provisions shall result in one or more of the following sanctions:

- (1) no further payments to the Contractor unless and until compliance is achieved;
 - (2) the Contractor being placed in default; and/or
 - (3) the Contractor being declared delinquent *The Consultant shall provide list of all subcontractors.*
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This Agreement entered into as of the day and year first written above.

AGREEMENT

OWNER

Charleston County Park and Recreation Date
Commission

CONSULTANT

Date

SAMPLE