

Agreement for Design Services for Pratt Community Park and Community Center

This Agreement is made the 19th day of Nov., 2015 by and between the **City of Birmingham, Alabama**, (the “**City**”) and **Tom Leader Studio** (the “**Landscape Architect**”), for the following design services (the “**Design Services**”) for the Pratt Community Park and Recreation Center in Birmingham, Alabama (the “**Project**”).

The City and the Landscape Architect agree as follows:

1. The Project Scope of Services

- 1.1. The Project will be developed by Landscape Architect through a scope of services as outlined in detail in Exhibit A (“**Scope of Services**”) for the Project.
- 1.2. The Project will be based primarily on the following information:
 - a. the main objectives of the Project of the City as outlined in the RFQ dated July 15, 2015, and referenced herein as if fully set forth;
 - b. meetings, conferences, and other communications with the City during the Project; and
 - c. stakeholder and community outreach, surveys, and focus groups as more fully defined in the Scope of Services.
- 1.3 Landscape Architect shall at all times provide sufficient personnel to accomplish the Design Services in a timely manner. Landscape Architect shall manage its services, administer the Project and coordinate its services with other professional services as necessary for the complete performance of Landscape Architect’s obligations under this Agreement.

2. Purpose of the Project

- 2.1. The purpose of this Project (the “**Purpose**”) is to design a recreation center and park for the Pratt City Community.

3. Fees for Services

- 3.1. The Landscape Architect’s fee for the Scope of Services will be paid by the City to the Landscape Architect in monthly installments invoiced based upon services provided and work performed each month. The City shall approve, in its reasonable discretion, each monthly invoice issued by the Landscape Architect, and shall pay such invoice, if approved, within 30 days of the date shown on the invoice from the Landscape Architect. The Project shall be conducted in two phases. The Landscape Architect’s fee for Phase I will be one hundred eight thousand, five hundred dollars (**\$108,500**), plus an additional allowance for reimbursable expenses not to exceed eleven thousand dollars (**\$11,000**). For Phase II of the Project, the City and the Landscape Architect will endeavor to agree upon a reasonable price based upon the tasks of schematic design, design development, bid administration, and construction documents, including structural, mechanical, electrical, and plumbing engineering, and interior design, or other programs and services to be identified in Phase I. Subject to the terms of this Agreement, the Landscape Architect’s fee for Phase II will not exceed six hundred eighty thousand dollars (**\$680,000**), plus an additional allowance for reimbursable expenses not to exceed forty thousand dollars (**\$40,000**).

4. Additional Services

- 4.1. The City may request additional services from the Landscape Architect (the “**Additional Services**”), defined below, during the term of this Agreement. Such Additional Services shall only be performed by the Landscape Architect upon prior written notice being given by the City to the Landscape Architect approving such Additional Services and upon both parties agreeing to the scope of such Additional Services. If the Landscape Architect performs any Additional Services without prior written notice being provided to the City,

the City shall not be liable for any fees or expenses incurred by the Landscape Architect in providing such Additional Services.

- a. The City may request that Landscape Architect propose a fixed maximum fee for any Additional Services or may agree to have the Additional Services performed on an hourly basis.
- b. The Landscape Architect's fee for Additional Services performed on an hourly basis shall be based on the rates indicated in Exhibit B;
- c. The Landscape Architect must, prior to the City granting approval of such Additional Services, notify the City if any time extension is required for completion of the Project (whether Phase 1 or Phase 2) if the Landscape Architect provides the Additional Services.
- d. Additional Services will include, without limitation:
 - i. services that are not included in the Scope of Services;
 - ii. changes to the Project, including size, quality, or complexity that would significantly alter the amount of work involved in developing the Project or changes to the City's instructions or approvals previously given by the City that require revisions in the Landscape Architect's work already approved by City;
 - iii. additional deliverables such as professional renderings not included in the Scope of Services or presentation models; and
 - iv. the Construction Phase Additional Services described in Section 5.5.

5. Construction Phase Services

- 5.1. General. The Landscape Architect shall advise and consult with the City during the Construction Phase Services of Phase II of the Project. The Landscape Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction work, nor shall the Landscape Architect be responsible for the Contractor's failure to perform the construction work in accordance with the requirements of the design documents and/or the Instruments of Service.
- 5.2. Construction Phase Deliverables. During the Construction Phase Services, the Landscape Architect will provide the City with Field Reports throughout the period of landscape and civil work with listed observations, recommendations, photographs and marked up plans as necessary of all observed construction activity. The Landscape Architect will also provide marked up drawings and submittals as necessary.
- 5.3. Construction Phase Activities. The Landscape Architect will review shop drawings and submittals; perform site observation and make recommendations to the City; respond to the Contractor's "Requests for Information" in a timely manner; coordinate with all relevant city agencies as required to facilitate timely issue resolution; and review contractor payment applications as desired by the City.
- 5.4. Construction Phase Procedures and Responsibilities. The Parties agree to the following Construction Phase procedures and responsibilities:
 - a. Landscape Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the earlier of the issuance to the City of the final Certificate for Payment or 60 days after the date of Substantial Completion of the Work. Landscape Architect and City shall mutually agree on the date of Substantial Completion.
 - b. Landscape Architect shall visit the Project site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the City and Landscape

Architect, to become generally familiar with and to keep the City informed about the progress and quality of the Work completed, and to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Construction Documents and Instruments of Service. However, Landscape Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality and quantity of the Contractor's Work.

- c. Landscape Architect shall report to the City known deviations from the Construction Documents and from the most recent construction schedule submitted by the Contractor. However, Landscape Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Construction Documents. Landscape Architect shall be responsible for Landscape Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.
 - d. Landscape Architect shall at all times have access to the Work wherever it is in preparation or progress.
 - e. Landscape Architect shall make recommendations to the City about Work that does not conform to the Construction Documents and may need to be rejected. Whenever Landscape Architect considers it necessary or advisable, Landscape Architect shall recommend to the City inspections or testing of the Work whether or not such Work is fabricated, installed or completed. However, neither these recommendations nor a decision by the City either to perform or not perform such tests shall give rise to a duty or responsibility of Landscape Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.
 - f. Landscape Architect shall review and approve or take other appropriate action on the required Contractor's submittals such as Shop Drawings, Product Data and Samples, On-site Mock-Ups but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Construction Documents. Landscape Architect's actions shall be with such reasonable promptness as to cause no delay in the Work or in the activities of the City, Contractor, or separate contractors, while allowing sufficient time in Landscape Architect's professional judgment to permit adequate review. 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 or installation or performance of equipment or systems, all of which remain the responsibility of the Contractor.
 - g. Landscape Architect's review shall not constitute approval of safety precautions or, unless specifically stated by Landscape Architect, of any construction means, methods, techniques, sequences, or procedures. Landscape Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
 - h. Landscape Architect shall conduct on-site observations to make recommendations to the City on the date or dates of Substantial Completion and date of final completions, shall review records, written warranties, and related documents required by the City's construction agreement with the Contractor and assembled by the Contractor, and shall recommend to the City issuance of a final Certificate for Payment based upon a final review indicating the Work complies with the Construction Documents.
 - i. Landscape Architect shall provide interpretations of the Construction Documents at the request of the Contractor or City. Interpretations and recommendations of Landscape Architect shall be consistent with the intent of and reasonably inferable from the Construction Documents and shall be in writing or in the form of drawings.
- 5.5. Additional Construction Phase Services. Additional Services shall also include but not be limited to the following:
- a. Site feasibility.

- b. Revisions and changes in drawings, specifications or other documents when such revisions are inconsistent with approvals or instructions previously given by the City; required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or the preparation of alternates or deductive change orders requested by City.
 - c. Plan preparation for and construction observation of portions of a project let on a segregated bid basis or to be additionally phased during construction beyond current phase one (including "fast track" bid packages).
 - d. Services with respect to replacement of any work damaged during construction which are not the result of negligence or wantonness of Landscape Architect.
 - e. Services required as a result of the default or insolvency of contractor.
 - f. Preparation of record drawings or of measured drawings of existing conditions.
 - g. Providing prolonged construction observation should the construction time be substantially extended except to the extent of the fault of Landscape Architect.
 - h. Providing services if, in "fast-track" projects, revisions to design or construction documents are required because of prior construction commitments or changes required in the construction process.
 - i. Providing services for "fast-track" Construction Document packages beyond those Construction Documents specified in Basic Services.
 - j. Cost of review as to form of lenders documents, certifications and consents to assignment requested of Landscape Architect during the term of this Agreement.
- 5.6. It is understood and agreed that the design process is not complete until the Project is entirely constructed. It is further understood and agreed that, if Construction Phase Services are provided for under this Agreement, such services are essential to the completion of the professional services for which Landscape Architect is being retained.

6. Reimbursable Expenses

- 6.1. Direct expenses of Landscape Architect incurred in the performance of the Scope of Services and any approved Additional Services ("**Reimbursable Expenses**") shall be invoiced monthly. Reimbursable Expenses will be paid by the City at the Landscape Architect's cost. The Landscape Architect shall obtain prior approval from the City before incurring any such expenses individually in excess of one thousand dollars (\$1,000.00), which approval shall not be withheld or delayed unreasonably.
- 6.2. Reimbursable Expenses shall include the following:
- a. travel expenses:
 - i. air travel: economy class. The Landscape Architect shall use its best efforts to book travel to achieve the best rates possible for the City; and
 - ii. local transportation, including taxi and rental car; and
 - b. hotel: the City shall book, whenever practical, hotel reservations in order to take advantage of its discount rates; and
 - c. meals during travel to Birmingham; and
 - d. other similar direct project-related expenditures; and
 - e. reproductions of drawings and other documents for presentation and submission, as well as presentation or exhibition as requested by the City; and
 - f. project related shipment of drawings, documents, and samples by post, messenger, or express/overnight type delivery services; and
 - g. renderings, models, computer modeling, mock-ups and photography that are produced by special request of the City; and
 - h. purchase of research materials and data required for the Project; and
 - i. materials and labor costs for physical models; and

- j. cost of any supplemental rider for the Project to bring any insurance policy coverage to a higher amount.

7. Commencement, Performance and Completion

- 7.1. The date of commencement of this Agreement shall be established by the City in its sole discretion.
- 7.2. The Landscape Architect will have performed its obligations under this Agreement upon receipt by the City of all of the items detailed in Exhibit A and completion of all Additional Services approved by the parties.
- 7.3. The term of this Agreement will be from the period commencing on the Date of Commencement and ending twenty four months thereafter.

8. Schedule

- 8.1. The Scope of Services shall commence the Project upon written Notice to Proceed from the City. From Notice to Proceed the Landscape Architect shall have six (6) months to complete Phase I of the Project. From Notice to Proceed the Landscape Architect shall have twenty four months to complete Phase II of the Project. Landscape Architect shall provide its services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project.

9. Suspension and Termination:

- 9.1. This Agreement may be suspended by the City upon written notice. In the case of such suspension, the Landscape Architect shall be entitled to be paid, the pro rata amounts due from the City, for all fees and expenses for the Scope of Services performed until the effective date of the suspension. Should the suspension exceed thirty (30) consecutive days beyond the Hold Period and the Project recommences, Landscape Architect may request additional compensation for any costs associated with the recommencement based upon the rates in Exhibit B.
- 9.2. This Agreement may be terminated by City or Landscape Architect upon 30 days' prior written notice. In the case of such termination, the Landscape Architect shall deliver all tangible work product developed as of the effective date of the termination and shall be entitled to be paid the pro rata amounts due from the City for all fees and expenses for the Scope of Services performed until the effective date of the termination.

10. Copyright

- 10.1. Drawings, sketches, specifications, documentation, deliverables and other materials, including those in electronic form, prepared and delivered by the Landscape Architect to the City under this Agreement for the Project ("**Instruments of Service**"), and all copyrights in such Instruments of Service, shall transfer to and become the property of the City upon payment of all amounts due to Landscape Architect for such Instruments of Service, with the following exceptions:
 - a. the Landscape Architect shall retain ownership of its original sketches, study models and study materials made for its own purposes, such as creative development and internal discussions; and
 - b. the Landscape Architect may use the Instruments of Service for its own marketing purposes and for its own creative development purposes without the express written consent of the City provided the conditions set forth in Section 14 of this Agreement are met.
- 10.2. The Landscape Architect shall indemnify and hold harmless the City from any and all damages, losses, claims and liabilities arising out of an allegation that the Instruments of Service infringe the copyright or similar intellectual property rights of any other individual, corporation, partnership, limited liability company or partnership, association, joint-stock company, trust, unincorporated organization, joint venture, governmental authority or other entity.

- 10.3. The City shall use its best efforts to identify the Instruments of Service as having been designed by Landscape Architect in any media releases, descriptive brochures, marketing, exhibits and similar materials concerning or making reference to the Instruments of Service

11. Standard of Care

- 11.1. The Landscape Architect shall exercise reasonable skill, care and diligence consistent with professional standards in the performance of its obligations under this Agreement.
- 10.2 Subject to Landscape Architect's professional standard of care, the Design Services shall be reasonably accurate and free from material errors or omissions. Landscape Architect shall promptly correct any known or discovered error, omission, or other defect in the plans, drawings, specifications, or other services provided by Landscape Architect without any additional cost or expense to the City.

12. Confidentiality.

- 12.1. Landscape Architect acknowledges, confirms, and agrees that the development of the Project, including sketches, diagrams, plans, drawings and related materials and the terms of this Agreement or any agreement entered into under this Agreement are of a confidential nature and shall not be disclosed to third parties without the prior consent of the City, other than to each party's respective officers, directors, employees, agents, sub-consultants, or other representatives on a "need-to-know" basis or as required to be disclosed by any applicable laws. The intent of this provision is to allow the City the opportunity to engage in public relations and to manage community engagement, expectation, and the City's relationship with civic agencies due to the importance and sensitivity of the Project and its potential impact on the neighborhood. The Landscape Architect covenants and agrees that its officers, directors, employees, agents, or other representatives who are under Landscape Architect's exclusive control, shall be bound by similar confidentiality restrictions as those provided in this Section.

13. Insurance

- 13.1. The Landscape Architect shall provide and maintain at all times during the performance of the Scope of Services the following insurance:
 - a. Workers' Compensation Insurance for protection of the Landscape Architect's employees as required by the law, in amounts sufficient to protect the Landscape Architect from loss or damage because of personal injuries to (including death of) its employees, including employers' liability coverage with limits of, not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) annually in the aggregate.
 - b. Commercial General Liability Insurance as will protect the Landscape Architect and the City, as an additional insured, from any and all claims for personal injuries or damages, including death, which may be suffered by persons and for damages to or destruction to the property of others, which may arise from the Landscape Architect's operations under this Agreement, and provide a minimum of one million dollars (\$1,000,000) per occurrence / two million dollars (\$2,000,000) aggregate combined single limit for bodily injury and property damage. Such policy shall include at least the following insurance coverages: (1) contractual liability; (2) personal injury; (3) broad form property damage; (4) independent contractors; (5) hazards of explosions, collapse, and other underground; (6) products liability; and (7) cross-liability, all such coverages subject to all policy terms and conditions.
 - c. Business Automobile Liability Insurance with limits not less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired auto coverage, as applicable.
 - d. Professional liability insurance, covering the Design Services provided under this Agreement, with a minimum limit of \$1,000,000 each claim and \$1,000,000 aggregate.

- 13.2. The Landscape Architect agrees to maintain such insurance at the Landscape Architect's expense in full force and effect with a company or companies and upon terms and conditions reasonably satisfactory to the City. All coverage shall remain in effect until completion of the Scope of Services and any Additional Services under this Agreement. True copies of certificates of insurance shall be delivered by the Landscape Architect to the City promptly upon commencement of this Agreement.
- 13.3. Landscape Architect agrees to maintain professional liability insurance as required by this Article so long as such coverage is available and commercially reasonable to obtain. Landscape Architect provides no express or implied warranties or guarantees of any kind.

14. Indemnification

- 14.1. Landscape Architect agrees to hold harmless and indemnify the City (and each director, officer, and employee thereof) against any and all losses and liabilities incurred to the extent caused by the negligence or wantonness of Landscape Architect in the performance of services under this Agreement, excluding however such losses and liabilities attributable to the negligence or misconduct of the City (and each director, officer, and employee thereof).
 - a. This Section 13 and the indemnity provisions hereunder shall survive the completion of Landscape Architect's Scope of Services and the Additional Services and the termination of this Agreement.

15. Designated Representatives

- 15.1. Each party shall appoint designated representatives (the "**Designated Representatives**") who are authorized to act on behalf of the parties in all matters, to receive any formal notification required under this Agreement, and for whom primary responsibility rests with regard to performance under this Agreement. The Designated Representatives of the parties are those persons set out in Exhibit D.
- 15.2. The City may at any time change or add to or clarify roles of its Designated Representatives upon written notification to the Landscape Architect.
- 15.3. Any communication required under this Agreement shall be in writing. All notices and approvals shall be in writing, typewritten and provided to the respective Designated Representatives by registered mail, courier or fax with confirmation of uninterrupted transmission. For all other communication e-mail shall be an enforceable means for providing such written communication.

16. Language

- 16.1. The Project language shall be English. This includes but shall not be limited to meetings, correspondence, Instruments of Service, deliverables and reports.

17. Severability

- 17.1. Any provisions or portion thereof of this Agreement prohibited by, unlawful, or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law.
- 17.2. Failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not amount to a waiver by them of the right at any time subsequently to enforce all the terms and conditions of this Agreement.

18. Intent Of Agreement

- 18.1. Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the City's designated Project Director and the designated principal of the Landscape Architect, and such persons shall endeavor to decide the true meaning and intent of the Agreement. Such referral may be initiated by written request from either party and a meeting between the two principals shall take place within five (5) days of the request.

19. Governing Law and Dispute Resolution

- 19.1. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama applicable therein. If a dispute arises in relation to any aspect of this Agreement, the Landscape Architect and the City shall first consult in good faith in an attempt to come to an agreement in relation to the disputed matter. Should a resolution not result from the good faith efforts of the parties to consult, notice of such failure to seek resolution shall be made in writing to both parties. Upon thirty (30) days from the date of notification, either party may seek legal remedies, including mediation by mutual agreement of the parties or litigation, which shall be exclusively in a court of competent jurisdiction located in Birmingham, Alabama.

20. Entire Agreement

- 20.1. This Agreement represents the entire agreement among the City, the City and Landscape Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by the City and Landscape Architect.

21. Time of the Essence

- 21.1. Time is of the essence of this Agreement. Landscape Architect, however, shall not be responsible for delays that result due to causes beyond its reasonable control.

22. Inurement

- 22.1. This Agreement shall inure to the benefit of and be binding upon the Landscape Architect and the City and their respective successors and permitted assigns.

23. Interpretation

- 23.1. In this Agreement:
- a. words in the singular include the plural and vice versa and words in one gender include all genders;
 - b. references to a Section or Schedule refer to the applicable section or schedule of this Agreement unless otherwise specifically provided;
 - c. the division of this Agreement into sections, subsections and schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
 - d. except where otherwise specified, any reference to a statute includes a reference to such statute and to its regulations, with all amendments in force from time to time, and to any statute or regulation that may be passed which has the effect of supplementing or superseding the statute or regulation.

24. Components of the Agreement:

- 24.1. The following exhibits are attached hereto and are fully incorporated in this document as if set forth herein:
- Exhibit A: Scope of Services;
 - Exhibit B: Fees for Services;

- Exhibit C: Deliverables;
- Exhibit D: Designated Representatives;

25. Immigration Law Compliance.

(a) Landscape Architect and City represent and warrant that they do not and will not knowingly employ, hire for employment, or continue to employ, in Alabama, an “unauthorized alien,” as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, *et seq.*, Code of Alabama 1975, as amended (the “Act”).

(b) Landscape Architect and City represent and warrant that, if not already enrolled, they will enroll in the E-Verify program prior to performing any work on the project in Alabama and shall provide documentation establishing that Landscape Architect and City are enrolled in the E-Verify program. During the performance of this Agreement, Landscape Architect and City shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations.

(c) Landscape Architect and City agree to comply with all applicable provisions of the Act with respect to their subcontractors by entering into an agreement with or by obtaining an affidavit from such subcontractors providing work for Landscape Architect and City on the Project in Alabama, that such subcontractors are in compliance with the Act with respect to their participation in the E-verify program. Landscape Architect and City represent and warrant that Landscape Architect and City shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which Landscape Architect and City know is not in compliance with the Act.

(d) By signing this Contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

26. Miscellaneous

- (a) **General compliance with laws.** The Landscape Architect shall comply, and shall cause its officers, agents, employees, and contractors to comply, with the provisions of all State, Federal and Local laws, statutes, ordinances and regulations, including the Disaster Appropriations Act of 2013, Pub. L. 113-2, and Fed. Reg. 32262 (May, 29, 2013), applicable to the performance of this Agreement.
- (b) **Landscape Architect and City** acknowledge that the City, as a matter of public policy and to the extent allowed under applicable law, encourages participation of minority-owned, women-owned and disadvantaged business enterprises to the maximum extent possible, subject to 24 CFR Pt. 85.36, seeks to provide opportunities for and to actively include Disadvantaged Business Enterprises (DBEs) and Historically Underutilized Business Enterprises (HUBE’s) which includes architectural firms, engineering firms, investment banking firms, other professional service providers, and construction contractors as part of the City’s business, economic and community revitalization programs. **Landscape Architect and City** agree to comply with this policy, and to include and retain those firms and contractors and as subcontractors or participants in other capacities to assist **Landscape Architect and City** to complete the Project where appropriate.
- (c) **Landscape Architect and City** (and their employees, agents and contractors) shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Project.

Failure to perform these requirements is a material breach of this Agreement and may result in its termination as the City deems appropriate.

- (d) Independent Contractor. The City and Landscape Architect agree that nothing contained in this Agreement nor any act of Landscape Architect or of the City shall be deemed or construed by either of the parties hereto or by third persons to create any relationship of third party beneficiary hereof, or of principal and agent, or of a limited or a general partnership, or of a joint venture, or of any association or relationship between Landscape Architect and the City other than as set forth herein. Landscape Architect recognizes that Landscape Architect is engaged as an independent contractor and acknowledges that the City shall have no responsibility to provide Landscape Architect or its employees with any benefits normally associated with employee status. Landscape Architect will neither hold itself out as nor claim to be an officer, partner, employee or agent of the City.
- (e) Audit. Landscape Architect shall maintain sufficient records to document its use and expenditure of all funds paid to the Landscape Architect pursuant to this Agreement. All pertinent books, accounts, or other records accumulated by the Landscape Architect pursuant to this Agreement must be accessible to representatives of the City and the City may, at reasonable times and places, audit the books and records of the Landscape Architect related to the Services during the term of this Agreement and for three (3) years from the date of final payment of the City funds under the terms of this Agreement. Landscape Architect shall keep the City fully informed as to the progress of the work and shall submit to the City such oral and written reports as the City may reasonably request.
- (f) Offset For Overdue Fees, Taxes, Etc. Pursuant to Executive Order of the Mayor of Birmingham No. 76-09 (effective as of August 21, 2009), Landscape Architect acknowledges and agrees that the City has the right to deduct from the total amount of consideration to be paid, if any, to Landscape Architect under this Agreement all unpaid, delinquent, or overdue license fees, taxes, fines, penalties and other amounts due the City from Landscape Architect.
- (g) Assignment. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Landscape Architect. Accordingly, Landscape Architect may not assign this Agreement or any portion thereof to any other party without the prior written consent of the City. In the event the City gives such consent, the terms and conditions of this Agreement shall apply to and bind the party or parties to whom such work is assigned as fully and completely as the Landscape Architect is hereby bound and obligated.
- (h) Owner's Information. The City shall provide necessary information and materials (*i.e.*, surveys, tests, inspections, reports, etc.) to the Landscape Architect in a timely manner. The Landscape Architect shall be entitled to rely on the accuracy and completeness of such services, information and materials furnished by the City and the City's consultants.
- (i) Hazardous or Toxic Materials. Landscape Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.
- (j) Mutual Waiver of Consequential Damages. Neither party shall have a right to recover from the other party consequential, incidental, special, or punitive damages, and both parties hereby waive such damages.

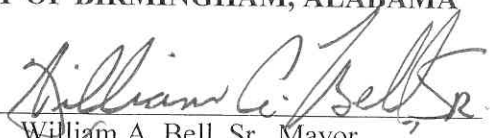
This Agreement is entered into as of the date last written below.

ATTEST:

By: 
Lee Frazier, City Clerk

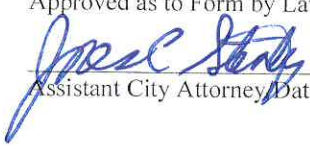
CITY

CITY OF BIRMINGHAM, ALABAMA

By: 
William A. Bell, Sr., Mayor


Date: November 30, 2015

Approved as to Form by Law Department:

 11/30/15
Assistant City Attorney Date

LANDSCAPE ARCHITECT

TOM LEADER STUDIO

By: 
Tom Leader

Date: Nov. 19th, 2015

Exhibit A

Scope of Services

This Exhibit sets out the Project's particulars and is fully incorporated into the Agreement for Design Services as if fully set forth therein.

Phase I Scope of Services Description

The following scopes of services outlined in this section are the responsibility of the Architect's Design Team:

- I. **Project Coordination.** The team will meet with the City to review project background, goals, work plan and schedule. The team will work with the City to identify the best course for public participation and to identify potential stakeholders.
- II. **Analysis.** The team will conduct an intensive site visit in order to develop a holistic understanding of the site's landscape character, people's relationship to the community, and the resources and communities of the surrounding area. The team will assess local amenities and programs to determine community and recreational needs that are already available to avoid unnecessary duplication and competition, as well as identify opportunities to fill needs. The team will assess the economic context of the community park and recreation center. The team will also inventory existing analyses and data in order to understand existing and proposed programming, park operations, revenue generation, and economic impact opportunities. Through stakeholder interviews with relevant city agencies, regional businesses, and organizations, the team will gauge stakeholder priorities and gather resources and information to support its research. The team will assess what additional functions this space can incorporate in the proposed budget, such that the need for more facilities can be addressed at this time and maximize the benefits from public investment.
- III. **Program Development.** The team will develop a matrix of potential amenities, programs and services for the recreation center and park. Character images will be compiled to illustrate the matrix. The team will facilitate a series of discussions with local stakeholders, including the city departments, neighborhood residents, and potential residents and other stakeholders. The team will craft a program for the site that is representative of the desires of the public as a true community asset. A series of activities and space program elements will be presented for discussion during the engagement process. The team will work with the City to evaluate the information collected and develop a prioritized list of amenities and programs desired for the recreation center and park. All potential opportunities will be vetted to establish a well-defined program with clear objectives to be addressed in the Conceptual Plan.
- IV. **Conceptual Plan.** The team will develop a cohesive conceptual plan that integrates the site, its systems, and the new structures into an innovative and catalytic civic space. The Conceptual Plan will develop the following areas:
Physical Planning
 - Size & location of structures and park amenities

- Pedestrian, Cycling & Vehicular Circulation & Neighborhood Connections
- Conceptual hydrology & grading
- Character of architectural and landscape architectural amenities

Operational Planning

- Recommendations for economic sustainability / revenue-generation
- Maintenance
- Implementation prioritization and phasing

The design team will develop 2-3 Concepts for the recreation center and park along with illustrative sketches to illustrate design intent. Upon a thorough review meeting with the City's strategic committee, the team will consolidate the preferred ideas and concepts into a single, cohesive conceptual plan.

Phase II

Community Park & Recreation Center Design

- I. **Schematic Design.** The design team will continue to meet with the City and its relevant departments for periodic reviews. Character boards for materials and design elements will be created, as well as updated cost estimates.
- II. **Design Development.** The team will adjust the design based on the schematic pricing. The team will continue to meet periodically with the necessary stakeholders to receive critical input and direction.
- III. **Construction Documents.** The team will produce a set of construction documents used to bid the project. At this point in the design process, all major issues will have been thoroughly vetted and decided upon. The design team will coordinate with consultants and add the necessary detail to the design in order to produce a thorough set of bid documents.
- IV. **Bid Administration.** The team will assist the City in the issuance and distributions of invitations to bid and bid documents.
- V. **Construction Administration.** The design team will administer the construction contract.

Exhibit B

Fees for Services

Additional Services shall be calculated and billed based upon the following hourly rates:

Principal:	\$270/hr
Associate Principal:	\$175/hr
Senior Associate:	\$165/hr
Associate:	\$155/hr
Senior Designer:	\$145/hr
Designer:	\$135/hr
Support Staff:	\$115/hr
Local Landscape Principal:	\$105/hr
Local Architect Principal:	\$100/hr
Local Landscape Associate:	\$85/hr
Local Architect:	\$80/hr
Local Project Manager:	\$75/hr
Local Landscape Designer:	\$65/hr
Local Support Staff:	\$60/hr

Exhibit C

Deliverables

Phase I: Program Development and Conceptual Design

1. Project Coordination
 - I. Refined Work Plan / Schedule
 - II. Stakeholder List / Public Engagement
2. Analysis
 - I. Site Opportunities & Constraints Plan / Summary
 - II. Program Opportunities & Constraints / Summary
3. Program Development
 - I. Potential Amenities, Program & Services Matrix
 - II. Character Boards
 - III. Soft Data Collection
 - IV. Public Input Summary
 - V. Prioritization Summary for Amenities, Programs & Services
 - VI. Spatial Requirements Program
4. Conceptual Plan
 - I. 2-3 Draft Conceptual Plans for building footprint and site development
 - II. Concept Sketches
 - III. Final Conceptual Plan & illustrative sketches
 - IV. Preliminary Cost Estimate

Phase II: Community Park & Recreation Center Design

1. Schematic Design
 - I. Schematic Design report summarizing the work
 - II. Overall Site Plan
 - III. Detail Plans at all park zones excluding central open space
 - IV. Cross Sections of site as needed
 - V. Diagrams for the following: Pedestrian / Vehicular Circulation, Hydrology Circulation, Lighting Concept

- VI. Depictions of key park spaces
- VII. Preliminary Grading and Utility Plan
- VIII. Updated schematic plans for the structures.
- IX. Schematic elevations for the structures.
- X. Site sections and building sections of the proposed structures.
- XI. Character and Material boards that communicate the fabric and texture of the proposed design.
- XII. Updated modeling, sketches, and 3d images of the proposed civic space and its structures
- XIII. Pricing narrative / Schematic cost estimates

2. Design Development

- I. Materials and Layout of all site / landscape / hardscape materials, Grading and Drainage Plan, Planting Plan, Lighting Plan & fixture cuts, Site Wayfinding / Graphics Plan with typical details, Planting and Hardscape Typical Details, Irrigation Plan, Site structural – typical details
- II. Floor Plan(s) for the proposed structures
- III. Developed elevations of the structures, including proposed envelope systems
- IV. Developed building sections, including proposed structural systems and site integration
- V. Wall sections detailing building and site system integration
- VI. Mechanical, Electrical, Plumbing, Fire protection, and Data Systems Plans
- VII. Preliminary fixture and finish schedules
- VIII. Outline specification
- IX. Updated project budget

3. Construction Documents

- I. Bidding and Construction Issue Set, including: Materials and Layout of all site / landscape / hardscape materials, Grading / Drainage / Utility Plans, Planting Plan, Lighting Plan & fixture cuts, Site Wayfinding / Graphics Plan Package, Planting and Hardscape Details, Irrigation Plan, Site Structural Details
- II. Site plan showing structures relative to site

- III. Foundation, Floor, and Reflected Ceiling Plans coordinating site, building and tech systems
- IV. Exterior Elevations for all structures coordinating envelope and finish
- V. Building Sections for all structures coordinating site and envelope systems
- VI. Wall sections for all structures providing greater detail of site and envelope systems
- VII. Details, as required, to communicate construction
- VIII. Full Mechanical, Electrical, Plumbing, Fire Protection and Technology plans and details
- IX. Door and Window Schedules / Finish Schedule / Furnishing, Fixtures and Equipment (FF&E) Schedules
- X. Full Specifications
- 4. Bid Administration
 - I. Bid Tabulation / Verification
- 5. Construction Administration
 - I. Consistent representation at Owner / Architect / Contractor Meetings
 - II. Periodic site visits for construction review
 - III. Response to construction RFI / Issue ASI as needed
 - IV. Review of submittals & contractor pay applications
 - V. Substantial Completion / Final Completion & Project Close-Out

Exhibit D

Designated Representatives

The following are the key representatives of the City and Architect that should receive formal notifications required under this Agreement and for whom primary responsibility rests with regard to performance under this Agreement.

City's Designated Representative

John Colón, Director, Community Development Department

Architect's Designated Representative

Tom Leader, Principal, Tom Leader Studio