

SAMPLE CONTRACT DOCUMENT

This is the contract for Architect and Engineering services for large projects. The letter to the design professional should accompany this contract, along with sample front end contract documents.

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

CONTRACT FOR ARCHITECT/ENGINEER SERVICES

AGREEMENT

made as of the _____ day of _____,

BETWEEN the Owner: Charleston County Park & Recreation Commission ("CCPRC")

and the Architect: * *(Name and address)*

CCPRC'S Project Number:

For the following Project:

**(Include detailed description of Project, location, address and scope under Article I.)*

The Owner and Architect agree as set forth below.

ARTICLE 1

ARCHITECT'S RESPONSIBILITIES

The Consultant acknowledges that it has thoroughly examined and understands the requirements of Request for Proposal (RFP) No. _____ issued by the Charleston County Park and Recreation Commission ("CCPRC") for the _____. The general scope of work is attached hereto as Attachment "A" (or listed below). Consultant agrees that services, which are reasonably required to complete the tasks set forth in Attachment "A", and to otherwise meet the intent of the RFP, are included in Consultant's lump sum fee.

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.

Scope of Work:

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

1.1 ARCHITECT'S SERVICES

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

1.1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect'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 Architect.

1.1.3 It is the responsibility of the Architect/Engineer 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, the Architect/Engineer may be required to assist the owner in the

selection of the sub-consultants. If any other fees will be associated with this additional work, the Architect/Engineer 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 including providing services after issuance to the Owner of the final Certificate for Payment or sixty (60) days from the date of Substantial Completion and for an observations of the facility ten (10) months after the date of Substantial Completion. The observation shall determine that all warranty work has been satisfactorily performed and shall identify any claims that should be made under the warranty. In the event any warranty claims are identified at the ten (10) month walk-through, then the Architect shall 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 Architect and/or the Owner, as applicable, shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating sub-soil conditions, with reports and appropriate professional recommendations. Architect shall consult with geotechnical engineer and advise of any special design concerns and scope of any subsurface evaluation.

1.1.6 The Architect shall furnish the services of geotechnical engineers when such services are requested by the Architect.

1.1.7 The Architect shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

1.1.8 The services, information, surveys and reports required by Paragraphs 1.1.5 through 1.1.7 shall be furnished at the Architect's expense.

ARTICLE 2

SCOPE OF ARCHITECT'S BASIC SERVICES

2.1 DEFINITION

2.1.1 The Architect's Basic Services consist of those services described in Article 2 and include normal civil, structural, mechanical and electrical engineering services.

2.2 SCHEMATIC DESIGN PHASE

2.2.1 The Architect 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 Architect 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 Architect shall review with the Owner alternative approaches to design and construction of the Project.

2.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Architect 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 Architect shall submit to the Owner a preliminary estimate of Construction Cost based on current area, volume or other unit costs.

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule, or construction budget, the Architect shall prepare, review and revise 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, mechanical and electrical systems, materials and such other elements as may be appropriate.

2.3.2 The Architect shall prepare updated estimates and advise the Owner of any adjustments to the preliminary estimate of Construction Cost.

2.4 CONSTRUCTION DOCUMENTS PHASE

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 Architect 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 The Architect shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor. Such forms shall be prepared in accordance with and are governed by CCPRC's procurement code. Architect shall incorporate CCPRC's standard form of agreement into the construction documents and seek and obtain approval of any special or supplementary general conditions from CCPRC prior to incorporating such changes into the bid documents.

2.4.3 At the conclusion of this phase, the Architect shall prepare a final estimate of cost for review and approval by CCPRC, and advise CCPRC of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in the program or general market conditions. If the final estimates exceed the anticipated construction costs, an adjusted budget may be approved by the Commission, upon recommendations by staff. The approved final estimate shall be used to determine the fixed limit of construction under Article 5.2.2.

2.4.4 The Architect 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.

2.5 BIDDING OR NEGOTIATION PHASE

2.5.1 The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction, in accordance with CCPRC's procurement code. Architect shall be required to review and comply with CCPRC's procurement code. Owner will provide the approved CCPRC documents, to be included in the bid documents, to the Architect. The Architect shall issue the bid documents to prospective contractors and collect the bid deposits pursuant to Owner's policies, instructions and directions, which is normally through an independent distribution center. The Architect shall remit bid deposits to Owner within 30 days of bid opening after refunding any plan deposits to prospective bidders who return their plans, if documents are distributed through the Architect. Architect shall provide Owner with an accounting of plan deposits and refunds when Architect remits payment to Owner. CCPRC will provide a maximum of 3 copies of the plans and specifications to the successful bidder. Additional copies may be obtained through arrangements between the Contractor and Architect at no additional expense to CCPRC.

2.6 CONSTRUCTION PHASE -- ADMINISTRATION OF THE CONSTRUCTION CONTRACT

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

2.6.2 The Architect shall provide administration of the Contract for Construction as set forth in the Agreement between CCPRC and the Contractor. The Architect shall prepare written minutes of project meetings held pursuant to Article 4.5 of the General Conditions of the Contract for Construction.

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

2.6.4 The Architect shall advise and consult with the Owner during construction until final payment to the Contractor is paid. The Architect 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 Architect shall visit the site at intervals appropriate to the stage of construction or as otherwise agreed by the Owner and Architect in writing to become generally familiar with 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 completed will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations, the Architect shall keep the Owner informed of the progress and quality of the Work, and shall use its best efforts to endeavor to guard the Owner against defects and deficiencies in the Work.

2.6.6 The Architect 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 Architect shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents. The Architect 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 Architect shall at all times have access to the Work wherever it is in preparation or progress.

2.6.8 Communications by and with the Architect's consultants shall be through the Architect. Architect shall work closely with other consultants to promote good communication of all planning and construction coordination.

2.6.9 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect shall review and certify the amounts due the Contractor. Architect shall comply with CCPRC's procurement code with respect to pay applications.

2.6.10 The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect'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 Architect'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 Architect. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed

construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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

2.6.12 The Architect shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction of the Owner or of separate contractors, while allowing sufficient time in the 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 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 Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect 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 Architect acknowledges that the Owner is obligated to consider alternates proposed by contractors as being equal to those specified. It shall be the Architect's responsibility, and already included in Architect's basic services, to evaluate and do whatever is necessary in meetings, reviews, modifications, etc. to fully exercise these considerations.

2.6.14 At Owner's request the Architect 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 code. Architect shall assist Owner in final negotiation of any Change Orders with the Contractor.

2.6.15 The Architect 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 issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

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

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 an equitable adjustment for the additional services. Such services include:

.1 Services provided as a consequence of a written request from CCPRC for more extensive representation at the site than is described in Subparagraph 2.6.5.

.2 Excessive and unanticipated revisions in Drawings, Specifications or other documents when such revisions are occasioned by:

- (1) inconsistent approvals or instructions previously given by the Owner, or
- (2) changes required as a result of the Owner's failure to render decisions in a reasonably timely manner, or
- (3) required by enactment or revisions to codes, laws or regulations which become effective subsequent to the preparation of the bid documents.

.3 Providing services required because of significant changes in the Project beyond the Architect's control including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Subparagraph 5.2.5.

.4 Preparing Drawings, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives when such changes do not result in whole or in part from Architect's errors or omissions.

.5 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work when such do not result in whole or in part from Architect's errors or omissions.

- .6 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction when such services do not result in whole or in part from Architect's errors or omissions.
- .7 Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work when such services do not result in whole or in part from Architect's errors or omissions.
- .8 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the Architect is party thereto when such services do not result in whole or in part from Architect's errors or omissions.
- .9 Providing additional financial feasibility or other special studies when such services do not result in whole or in part from the Architect's errors or omissions.
- .10 Providing additional planning surveys, site evaluations or comparative studies of prospective site beyond the civil design when such services do not result in whole or in part from the Architect's errors or omissions.
- .11 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project when such services do not result in whole or in part from the Architect's errors or omissions.
- .12 Providing services relative to future facilities, systems and equipment when such services do not result in whole or in part from the Architect's errors or omissions.
- .13 Providing services to investigate existing conditions or facilities or to make measured drawings thereof when such services do not result in whole or in part from the Architect's errors or omissions.
- .14 Providing services to verify the accuracy of drawings or other information furnished by the Owner when such services do not result in whole or in part from the Architect's errors or omissions.
- .15 Providing services of consultants for other than architectural, civil, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services when such services do not result in whole or in part from the Architect's errors or omissions.
- .16 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice when such services do not result in whole or in part from the Architect's errors or omissions.

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.

4.2 The Owner shall establish and update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

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 Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

4.4 The Owner shall furnish any available information in 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 code 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 Architect or Architect's consultants shall be submitted to the Architect 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 Architect.

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 Architect, 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 Architect and Architect's consultants, 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 Architect, represent the Architect's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect 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 Architect 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 Architect.

5.2.2 The fixed limit of Construction Cost shall be established as the Architects final approved estimate under Article 2.4.3. The Architect 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 Phase has not commenced within ninety (90) days after the Architect 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 2.4.3 is exceeded by 15%, 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 Architect, 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
**USE OF ARCHITECT'S DRAWINGS,
SPECIFICATIONS AND OTHER DOCUMENTS**

6.1 The Drawings, Specifications and other documents prepared by the Architect for this Project are instruments of the Architect's service for use solely with respect to this Project and, unless otherwise provided, the Architect shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including reproducible copies, of the Architect's Drawings, Specifications and other documents for information and reference in connection with the Owner's use and occupancy of the Project.

6.2 Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Architect's reserved rights.

ARTICLE 7
TERMINATION

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

7.2 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 as defined in Paragraph 7.3.

7.3 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 pre-design, site analysis, or Schematic Design Phases; or
- .2 Ten percent (10%) of the total compensation for Basic and Additional Services earned to date if termination occurs during the Design Development Phase; or
- .3 Five percent (5%) of the total compensation for Basic and Additional Services earned to date if termination, occurs during any subsequent phase.

7.4 CCPRC may terminate this agreement for default if the Architect fails to perform in accordance with this Agreement upon 7 days written notice. In the event of termination which is the fault of the Architect, Architect shall provide CCPRC with all drawings and other work product and CCPRC may retain the services of a replacement architect and if the fees and expenses of the

replacement architect and CCPRC's administrative, legal and termination costs exceed the contract balance, Architect agrees to indemnify and reimburse CCPRC for these costs and fees. In the event of termination for default, CCPRC shall have no further liability to architect.

ARTICLE 8

MISCELLANEOUS PROVISIONS

8.1 This Agreement shall be governed by the CCPRC procurement code. The parties agree any disputes arising from this Agreement shall be resolved in a court of competent jurisdiction (non-jury trial) in Charleston, South Carolina.

8.2 This Agreement represents the entire and integrated agreement between the Owner and Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

8.3 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect. Architect is not and has no authority to act as Owner's agent.

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

8.5 The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's promotional and professional materials. The Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall designate professional credit for work being performed by the Architect and the name of the firm shall be included on the construction sign and in the promotional materials for the Project.

ARTICLE 9

PAYMENTS TO THE ARCHITECT

9.1 DIRECT PERSONNEL EXPENSE

9.1.1 Direct Personnel Expense is defined as the direct salaries of the Architect'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.

Architect shall account for such expenses using daily records and reports. CCPRC shall have the right to audit such expenses upon reasonable notice.

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. 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. If the letter of authorization accompanying these terms and conditions allows the payment of "reimbursables", they shall be paid at Seller's/Contractor's actual cost and subject to audit by CCPRC.

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

9.2 REIMBURSABLE EXPENSES

9.2.1 Architect 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 Architect and Architect'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.

9.2.2 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.

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

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

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

9.3 PAYMENTS ON ACCOUNTS OF BASIC SERVICES

9.3.1 Subsequent payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Subparagraph 10.1.1.

9.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

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

9.5 PAYMENTS WITHHELD

9.5.1 No deductions shall be made from the Architect'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 Architect has been found to be liable.

9.6 ARCHITECT'S ACCOUNTING RECORDS

9.6.1 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 10 **BASIS OF COMPENSATION**

The Owner shall compensate the Architect as follows:

10.1 BASIC COMPENSATION

10.1.1 FOR BASIC SERVICES, as described in Article 2, and any other services included in Article 11 as part of Basic Services. Basic Compensation shall be the price of: _____ Dollars.

Progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable:

**(Insert additional phases as appropriate. Dollar amounts may be used in lieu of percentages.)*

Schematic Design Phase: (Programming)	percent ()
Design Development Phase:	percent ()
Construction Documents Phase:	percent ()
Bidding or Negotiation Phase:	percent ()
Construction Phase:	percent ()
Total Basic Compensation:	one hundred percent (100%)

10.2 COMPENSATION FOR ADDITIONAL SERVICES

10.2.1 FOR ADDITIONAL SERVICES OF THE ARCHITECT, as described in Article 3 and compensation shall be computed as follows:

**(Insert basis of compensation, including rates and/or multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required, identify specific services to which particular methods of compensation apply, if necessary).*

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 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.

10.3 REIMBURSABLE EXPENSES

10.3.1 Reimbursables shall be paid at direct expense. In accordance with Article 9.2, Architect's fixed reimbursable budget is established as \$_____. Should the fixed reimbursable budget require adjustment as a consequence of additional work, or services requested by the Owner, Architect shall notify Owner and request an adjustment in writing. Architect bears the right for any expenses it incurs in excess of Owner's fixed reimbursable budget. Architect shall submit proof of direct expenses which are subject to periodic review and audit of CCPRC.

10.4 ADDITIONAL PROVISIONS

10.4.1 Payments are due and payable within thirty (30) days from the date of the Architect's invoice. Invoices are subject to Owner's review and adjustment. If Owner has a dispute over a portion of the invoices, the undisputed portion will be paid. Disputed and/or undisputed amounts unpaid shall bear no interest.

10.4.2 CCPRC's total liability for fees, expenses and additional services shall not exceed \$_____ without prior written authorization from CCPRC. Architect assumes all risk for any services or expenses incurred beyond this ceiling and guaranteed maximum absent written authorization from CCPRC.

ARTICLE 11 **OTHER CONDITIONS OR SERVICES**

11.1 Architect 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 in coverage.

11.2 The Architect will use the following sub-consultants and shall properly pay such sub-consultants for their work. Architect shall indemnify and hold harmless CCPRC from any and all manners of claim of sub-consultants for non-payment for these services. Additionally and to the fullest extent allowed by South Carolina Law, Architect shall indemnify and hold harmless CCPRC from any and all manner of claims (including reasonable attorney's fees) allegedly covered in whole or in part or arising from in whole or in part the Architect's negligence, failure,

errors, omissions, tortuous conduct, breach of standards or customs or codes or any duties arising under this agreement.

Architect shall provide list of all sub-consultants.

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

AGREEMENT

OWNER

ARCHITECT

Date
Name
Executive Director
Charleston County Park and
Recreation Commission

Date
Name
Company