

CITY OF ALBUQUERQUE LANDSCAPE ARCHITECTURAL SERVICES AGREEMENT

LANDSCAPE ARCHITECTURAL CONSULTANTS FOR VARIOUS LANDSCAPE ARCHITECTURAL DESIGN PROJECTS FOR THE DEPARTMENT OF PARKS AND RECREATION

THIS AGREEMENT, made and entered into on the date last entered below by the signatories hereto, is by and between the City of Albuquerque, New Mexico, a New Mexico municipal corporation, hereinafter referred to as the "City", and the following business entity, hereinafter referred to as the "Landscape Architect":

Name of Firm	Landscape Company, Ltd.
Type of Legal Entity	Corporation
Address	123 ABC Street
	Albuquerque, NM 87108
State of Incorporation	New Mexico

WITNESSETH:

WHEREAS, on June 5, 2017 the City Council approved the Mayor's recommendation that the Landscape Architect provide the City with professional services relating to the Project described in Article II of this Agreement; and

WHEREAS, funding for the work and services in this Agreement has been appropriated to the City's Capital Implementation Program, for the above-referenced Project; and

WHEREAS, the City desires to engage the Landscape Architect to render professional Landscape Architectural services in connection therewith and the is willing to provide such services; and

WHEREAS, the Landscape Architect represents that the person who has executed this Agreement on behalf of the Landscape Architect has the authority to bind the Landscape Architect to this Agreement pursuant to Section 61-15-6K, NMSA 1978; and

WHEREAS, the Landscape Architect represents that, in accordance with the Landscape Architectural Act, Section 61-15-1, et. seq., NMSA 1978, the following named person or persons are professional Landscape Architects who will be in responsible charge of and directly responsible for the services required of the Landscape Architect under this Agreement and shall be hereinafter the "Project Landscape Architects":

Name	NMRLA Certificate Number
John Landscape Designer	1

NOW, THEREFORE, in consideration of the premises and covenants hereinafter contained, the parties hereto hereby agree as follows:

ARTICLE I DEFINITIONS

- A. Landscape Architect** means the firm named in this Agreement, which employs a person currently registered as a landscape architect of New Mexico or the individual named in this Agreement who is a currently registered resident landscape architect of New Mexico. In the instance of a firm, the term "Landscape Architect" shall include the Project Landscape Architects listed in this Agreement.
- B. City Project Manager** means the City employee designated as the City's representative to the **Landscape Architect**.
- C. Contractor** means the construction contractor or contractors awarded the contract by the City for the construction of the Project.
- D. Deputy Director** means the Deputy Director of the City of Albuquerque's Department of Municipal Development, or its successor.
- E. Estimated Construction Cost** means the total estimated cost for the construction of the project described in this Agreement, excluding fees, taxes and costs for legal and Landscape Architectural or other design professional services, right-of-way and land acquisition, administrative services, City project contingency funds, and all costs which are the responsibility of the City, or any costs for which design effort or activity by the Landscape Architect is incidental.

ARTICLE II DESCRIPTION OF PROJECT

(LANGUAGE USED AS EXAMPLE ONLY)

Provision of Landscape Architectural services to renovate the existing pool facility at Los Altos Park by a complete demolition of the existing building. The floor plan will be redesigned and expanded. The existing pool, mechanical and equipment will be kept with the renovation. The Scope of Services may include studies, analyses, site planning, pre-design, design development and/or construction phase services.

ARTICLE III SCOPE OF SERVICES

The Landscape Architect shall perform professional services relevant to the Project in accordance with the terms and conditions set forth herein, and as provided in Exhibit I, Landscape

Architect's Scope of Services, which is attached hereto and by this reference is incorporated herein and made a part of this Agreement as though set forth in full. If changes occur in the terms and conditions of this Agreement, scope of services, or the description of the Project, a supplemental agreement may be negotiated at the request of either party.

ARTICLE IV COMPENSATION

- A. BASIC FEE:** The Landscape Architect shall be compensated on an hourly basis commensurate to the Schedule of Wage Rates listed below and pursuant to the services performed, provided the maximum compensation does not exceed the sum of _____ Dollars (\$_____), exclusive of gross receipts tax. Individual work authorization shall be approved by the City's Project Manager as

described in Exhibit I. The Landscape Architect shall abide by all provisions of both the Accountability in Government Ordinance (Section 2-10-1 COA) and the Inspector General Ordinance (2-17-1 COA).

B. SCHEDULE OF WAGE RATES:

1. Landscape Architect will be required to complete a PE 10-249 Pay Equity Report for all employees as part of this Agreement.
2. For the services rendered, the City shall pay the Landscape Architect at a rate of 2.97 times direct payroll cost which shall be defined as the product of the employee's basic hourly rate multiplied by the number of hours that employee expended on the project. The basic hourly rate shall be determined by dividing 40 hours into that employee's regular salary for a 40-hour week. Direct payroll costs shall not include any fringe benefits.
3. For additional services utilizing sub-contractors of professional consultants engaged for Landscape Architectural services; civil, structural, mechanical and electrical engineering services; and other professional specialty services the City shall pay at a rate of 1.1 times the amount billed to the Landscape Architect for such services.
4. Reimbursable services shall be paid at actual cost.

C. PAYMENT SCHEDULE:

1. Payments for the Landscape Architect's services may be made in monthly installments upon presentation of a detailed statement of the services rendered. Payment shall be subject to approval of the statement by the City's Project Manager.
2. Payments for approved reimbursable expenses, may be made monthly upon presentation of the Landscape Architect's invoices.

- D. GROSS RECEIPTS TAX/NON-TAXABLE TRANSACTIONS:** The Landscape Architect may add any applicable gross receipts tax to the fees and other payments payable hereunder. The Landscape Architect shall use and require the use of non-taxable transaction certificates by consultants and suppliers whenever allowed by law. In all events, the Landscape Architect shall not include gross receipts taxes paid to others as a part of the base dollar amount upon which the Landscape Architect calculates its gross receipts taxes when billing the Landscape Architect's fees and expenses to the City.

ARTICLE V OWNERSHIP AND USE OF DOCUMENTS

- A.** Original construction document drawings, calculations, technical data, and data related specifically to the Project, designs, specifications, notes (including field notes), project manuals, and related documents and other work developed in the performance of this Agreement by the Landscape Architect shall vest in and shall become the sole property of the City whether the Project for which they are made is constructed or not. Production costs of such materials shall be included within the Landscape Architect's basic fee. With respect to computer programs and computer data, the City, at its option and at its cost, may require that the Landscape Architect provide any and all computer licensing agreements necessary to permit the City to use computer programs and data related to the Project. As part of the Basic Fee, the Landscape Architect may maintain and retain a complete reproducible set of any and all record documents developed under this Agreement. Delivery of original documents shall not be required by the City prior to completion of the performance or termination of this Agreement. Electronic data delivered to and accepted by the City shall not include the professional stamp or signature of an engineer, Architect, or Landscape Architect. City agrees that Landscape Architect shall not be liable for claims, liabilities or losses arising out of, or connected with, the decline of accuracy or readability of electronic data due to inappropriate storage conditions or duration.
- B.** All documents, including drawings and specifications prepared by the Landscape Architect pursuant to this Agreement, are instruments of service in respect to the Project. They are not intended or represented by the Landscape Architect to be suitable for reuse by the City on any other project except as provided in Paragraph E below.
- C.** The original drawings may be marked by the City or the Landscape Architect to designate the restrictions of use of these documents as set forth in this Article.
- D.** Copyright: no reports, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Landscape Architect. However, the Landscape Architect may use these documents as reference and research materials and as representations of the design of the Project, including photographs of the work among the Landscape Architect's promotional and professional materials, provided however that such documents and materials shall not include the City's confidential or proprietary information in the event the City has previously advised the Landscape Architect in writing of matters that the City considers confidential or proprietary. The City shall provide professional credit for the Landscape Architect in promotional materials for the Project if so requested, in writing, by the Landscape Architect.

- E.** The City acknowledges the Landscape Architect’s construction documents, including the accepted electronic versions of such documents, as instruments of professional service. Nevertheless, the plans and specifications prepared under this Agreement shall become the property of the City upon completion of the work and payment in full of all fees due the Landscape Architect. The City agrees, to the fullest extent permitted by law, to indemnify and hold the Landscape Architect harmless from claim, liability or cost arising or allegedly arising out of any unauthorized modification or misuse of the construction documents by the City or any person or entity that acquires or obtains the plans and specifications from or through the City. This indemnity provision is subject to Section 56-7-1, NMSA 1978, as amended.
- F.** The City shall make accessible to the Landscape Architect, but not copy, all of its maps, records, reports, or other data pertinent to the services to be performed by the Landscape Architect pursuant to this Agreement, and also make accessible any other maps, records, or other materials available to the City from any other public agency or body.
- G.** In the event the City requires additional copies of the documents prepared under this Agreement prior to the Landscape Architect’s delivery of the original documents to the City, the Landscape Architect agrees to promptly provide copies upon request, and the City agrees to reimburse the Landscape Architect for reasonable costs of reproduction, not to exceed actual costs of reproduction, including labor costs expended in providing the requested copies.

ARTICLE VI
ACCOUNTING PROCEDURES AND RECORDS REQUIRED

- A.** Records of expenses by the Landscape Architect and its consultants pertaining to all services provided under this Agreement (other than lump sum fees) shall be kept on the basis of generally accepted accounting principles and shall be available at mutually convenient times to the City or the City’s authorized representative, but only if requested by the Chief Administrative Officer or the Office of Internal Audit. The City shall have the right to audit all such records and billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.
- B.** Required records of expenses shall be kept by the Landscape Architect and its consultants and shall be available to the City until all applicable Statutes of Limitations have run, and this Article VI shall survive and continue beyond the termination of any other terms of this Agreement.
- C.** In the event the City audits the Landscape Architect’s records, pursuant to this Article, Landscape Architect shall make available to the City for examination all of the Landscape Architect’s records with respect to all matters covered by this Agreement and shall permit the City to audit, examine, and make copies at its own expense, excerpts or transcripts from all such records, and to make audits including, but not limited to: all contracts; invoices; materials; payrolls; records of personnel, to the extent allowed by law; conditions of employment and other data relating to all matters covered by this Agreement. The Landscape Architect and its sub consultants shall not be compensated under this Agreement for its time or any costs incurred in complying with this paragraph.

ARTICLE VII
SUSPENSION AND TERMINATION OF AGREEMENT

- A. PROJECT SUSPENSION:** If the Project is suspended for more than three (3) months or abandoned in whole or in part, the Landscape Architect shall be compensated for its services performed prior to receipt of written notice from the City of such suspension or abandonment, together with expenses then due. If the Project is resumed after being suspended for more than three (3) months, the Landscape Architect's compensation shall be subject to renegotiation. In the event fees cannot be agreed upon, the City may select another Landscape Architect, and the Landscape Architect shall be entitled to no further fees.
- B. TERMINATION:** If either party should fail to fulfill in timely and proper manner its obligations under this Agreement, or if either party should violate any of the covenants, agreements, or stipulations of this Agreement, such party, in addition to remedies available under the terms of this Agreement thereupon shall have the right to terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date thereof at least fifteen (15) days before the effective date of such termination. The Landscape Architect shall be responsible for all direct and consequential costs and damages which may arise out of the Landscape Architect's failure to complete the services in accordance with the schedule of the Landscape Architect's services defined in or pursuant to this Agreement, provided however, that the Landscape Architect shall not be responsible for damages caused by the City's delay. The Landscape Architect shall not be entitled to delay damages against the City for delay of the performance of this Agreement caused by the City or any third parties.
- 1. Termination Due to Abandonment:** In the event that the Project is abandoned by the City, the City may terminate this Agreement at any time by giving at least fifteen (15) days written notice to the Landscape Architect.
 - 2. Termination for convenience of the City:** The City may terminate this Agreement, in whole or in part, for the City's convenience at any time by giving at least fifteen (15) days written notice to the Landscape Architect.
 - 3. Termination Due To Non-Funding:** In the event the construction project funds out of which this Agreement is funded are depleted to the extent the funds are inadequate for the City to make the payments required pursuant to this Agreement, the City may terminate this Agreement by giving at least ten (10) days written notice to the Landscape Architect.

4. Effect of Termination: Upon Landscape Architect's receipt of a notice of termination, the Landscape Architect shall promptly discontinue all services affected, unless otherwise directed in writing by the City. All finished or unfinished documents, data, sketches, calculations, summaries, estimates, records, schedules, studies, surveys, drawings, maps, models, photographs, reports, and such other information and data accumulated in the performance of services under this Agreement, whether complete or in progress, prepared by the Landscape Architect under this Agreement shall become the City's property, regardless of the cause for termination. The Landscape Architect shall be entitled to receive compensation for actual work satisfactorily completed hereunder, including reimbursable expenses authorized by City which are then due, but shall not be entitled to recover any consequential damages, including, but not limited to loss of anticipated profits, for any termination allowed pursuant to this Article. In the event of termination for convenience, the City may take over the work of the Project and continue the Project by contract with another party or with its own staff.

C. GIVING NOTICE: The time required to give notice in this Article VII shall begin to run from and including the date of the postmark of the letter of termination or date of personal delivery.

ARTICLE VIII STANDARD OF CARE

The Landscape Architect agrees that it and its employees shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties they perform in connection with the services to be performed under this Agreement. These services shall be performed in accordance with the standards of the profession. The Landscape Architect further agrees that it will require its consultants, subconsultants, joint venturers, and agents to agree with the Landscape Architect that they possess the experience, knowledge, and character necessary to qualify them individually for the particular duties that are performed in connection with the services to be performed for the Landscape Architect on the projects. Such agreement by consultants, subconsultants, joint venturers, and agents shall further provide that the services required of them shall be performed in accordance with the standards of their profession and shall not be construed as a diminution of the Landscape Architect's liability and responsibilities to the City.

ARTICLE IX INDEMNIFICATION

A. The Landscape Architect agrees to defend, indemnify, and hold harmless the City and its officers, and employees from and against all suits, actions, or claims of any character brought against the City because of any injury or damage received or sustained by any person, persons, or property arising out of or resulting from any negligent act, error, or omission of the Landscape Architect, its agents or its employees arising out of the performance of this Agreement. Nothing in the Agreement shall be construed to require the Landscape Architect to defend, indemnify, and hold harmless the City, its officers, and employees from and against liability, claims, damages, losses or expenses, including attorneys fees, arising out of bodily injury to persons or damage to property caused by or resulting from in whole or in part the negligence, act or omission of the City, its officers and employees or any legal entity for

whose negligence, acts, or omissions any of them may be liable, as to liability, claims, damages, losses or expenses, including reasonable attorneys fees, arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the City, or the agents or employees or officers of the City or the giving or failure to give directions or instructions by the City or agents or employees or officers of the City where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property. Receipt by the City of the Landscape Architect's services under this Agreement and City authorization for the Landscape Architect to proceed with the various phase of services shall not be construed as approval of the Landscape Architect's work product by the City or as the giving of instructions or directions by the City. This indemnification provision is subject to the limitations and provisions of Section 56-7-1, NMSA 1978.

- B.** The Landscape Architect's time and expenses spent defending allegations in claims or lawsuits that the Landscape Architect was negligent shall be at the Landscape Architect's own expense, and the Landscape Architect shall cooperate with the City in defending claims and lawsuits arising out of the negligence of the Landscape Architect. This will not require of the Landscape Architect analyses, computations, and other Landscape Architectural work, which is not in the scope of this Agreement.

ARTICLE X FINAL PAYMENT

The Landscape Architect, by its acceptance of final payment of the amounts due under this Agreement, releases the City, its officers and employees, from all liabilities and obligations for fees and costs due under this Agreement including, but not limited to, all damages, losses, costs, liability, and expenses (including, but not limited to, attorneys' fees and costs of litigation) that the Landscape Architect may have. All representations, including standard of care issues, made in this Agreement will survive final payment and termination or completion of this Agreement.

ARTICLE XI GENERAL AND SPECIAL PROVISIONS

- A. COMPLIANCE WITH LAWS:** The Landscape Architect agrees to perform this Agreement in compliance with all Federal, State, and local codes, regulations, ordinances, and laws in effect at the time of contracting.
- B. GOVERNING LAW:** This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of New Mexico.
- C. CONTRACT FOR CONSTRUCTION: LANDSCAPE ARCHITECT'S STATUS:** The extent of the Landscape Architect's duties and responsibilities, the Landscape Architect's relationship with the Contractor, and the limitations of the Landscape Architect's authority during the Construction Phase of this Agreement shall be in accordance with the General Conditions contained in the **City of Albuquerque Standard Specifications for Public Works Construction** and all Supplemental General Conditions thereto, which are in effect on the date of execution of this Agreement or such other or additional General Conditions of the Construction Contract, as specified in Exhibit I, Landscape Architect's Scope of Services of this Agreement, all of which are incorporated herein as though set forth in full. The term

"Engineer" shall be replaced with the term "Landscape Architect" throughout said General Conditions. Such General Conditions and supplements thereto shall not be modified without the Landscape Architect's written consent to the extent such changes effect the Landscape Architectural services required by this Agreement.

- D. INDEPENDENT CONTRACTOR STATUS:** The Landscape Architect, and its agents and employees, are independent contractors performing professional and technical services for the City and are not employees of the City. The Landscape Architect, and its agents and employees, shall not as a result of this Agreement accrue leave or retirement, and shall not be entitled to insurance or bonding benefits or coverage, and shall not be entitled to use City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.
- E. TERM:** The Term of this Agreement shall be eight years commencing on the date executed by the City. The Landscape Architect shall perform the services required by this Agreement as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Failure of the Landscape Architect to perform in such a manner shall constitute a basis for termination and/or withholding of payment until timely performance is achieved by the Landscape Architect. For purposes of this paragraph, the failure of the Landscape Architect to meet the performance schedule of Exhibit III of this Agreement or any extension thereof authorized by the City shall be a failure to perform expeditiously and consistently with professional skill and care.
- F. TIME OF ESSENCE:** All time limits stated in this Agreement are of the essence in the performance of this Agreement.
- G. LANDSCAPE ARCHITECT'S CHANGE OF STATUS:**
- 1. Assignment of Contract:** Neither party shall assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written consent of the other party.
 - 2. Joint Venture:** In the event the Landscape Architect proposes to perform this Agreement as part of a joint venture, all such joint venture Agreements shall be reviewed by and meet the requirements of the Deputy Director and made an incorporated exhibit to this Agreement. Such joint venture Agreements shall clearly identify the duties and responsibilities of each joint venturer as such duties and responsibilities relate to the performance of this Agreement.

3. **Mergers, Dissolution, Successors, and Assigns:** The Landscape Architect agrees that during the term hereof it will maintain its existing business structure and will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another business structure or permit one or more other business structures to consolidate or merge into it, unless the surviving, resulting, or transferor business structure, as the case may be, (1) is capable of performing, and agrees in writing to perform all of the obligations of the Landscape Architect hereunder; (2) qualifies to do business in the State of New Mexico, including providing a legal registered landscape architect of New Mexico as Project Landscape Architect; and (3) the Deputy Director approves of the firm or individual landscape architect, or new landscape architect, if any, who is to proceed with the performance of this Agreement. The terms and provisions hereof shall extend to and be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto. The failure of the Landscape Architect to comply with the foregoing provisions of this paragraph shall constitute a default of this Agreement by the Landscape Architect.

4. **Project Landscape Architect/Change of Status:** The Deputy Director shall have sole discretion to determine whether the Project Landscape Architect(s) or which of them, or the firm named as Landscape Architect in this Agreement shall continue to have all contract rights under this Agreement and continue to represent the City under this Agreement in all instances where all or some of the Project Landscape Architects cease to be associated with the firm named in this Agreement.

5. **Subcontracting:** In the event that the Landscape Architect subcontracts out any portion of its duties or responsibilities under this Agreement or if the Landscape Architect hires sub consultants to assist it with its duties or responsibilities under this Agreement, the Landscape Architect shall require that all terms of this Agreement applicable to the subconsultant, subcontractor, or joint venturer shall be incorporated into any contract or agreement entered into with such subconsultant, subcontractor, or joint venturer, and the City shall be entitled to receive a copy of all such contracts or agreements from the Landscape Architect.

H. CONTRACT INTERPRETATION:

1. **Severability:** If any clause or provision in this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

2. **Waiver:** No provision of this Agreement shall be deemed to have been waived by either party unless such waiver is in writing, signed by the party making the waiver and addressed to the other party, nor shall any custom or practice which may evolve between the parties in the administration of the terms of this Agreement be construed to waive or lessen the right of either party to insist upon the performance of the other party in strict accordance with the terms of this Agreement. Further, the waiver by any party of a breach by the other party or any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition thereof.
3. **Gender, Singular/Plural:** Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.
4. **Captions and Section Headings:** The captions and section headings contained in this Agreement are for convenience of reference only, and in no way limit, define, or enlarge the terms, scope, and conditions of this Agreement.
5. **Multiple Originals:** This document may be executed in counterparts, each of which shall be deemed an original.
6. **Entire Agreement:** This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this contract, and all such conditions, understandings, and agreements have been merged into this written Agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this written Agreement.
7. **Interchangeable Terms:** For purposes of all provisions within this Agreement and all attachments hereto, the terms “Agreement” and “Contract” shall have the same meaning and shall be interchangeable.
8. **Words and Phrases:** Words, phrases, and abbreviations, which have well-known technical or trade meanings used in the Contract Documents shall be used according to such recognized meanings. In the event of a conflict, the more stringent meaning shall govern.
9. **Relationship of Contract Documents:** All documents attached to this Agreement or incorporated into this Agreement are complementary, and any requirement of one contract document shall be as binding as if required by all.

10. Exhibits, Certificates, Documents Incorporated and Attachments: Incorporation by Reference: All certificates, documents, exhibits, attachments, riders, and addenda referred to in this Agreement, including but not limited to the exhibits referred to in this Agreement, as well as those listed hereinafter and those which are within the standard of care of the industry, are hereby incorporated into this Agreement by reference and made a part hereof as though set forth in full in this Agreement to the extent they are consistent with its conditions and terms. The following exhibits are attached hereto and incorporated herein as though set forth in full:

- (a) **Exhibit I:** Landscape Architect's Scope of Services
- (b) **Exhibit II:** City's Responsibilities
- (c) **Exhibit III:** Project Schedule
- (d) **Exhibit IV:** Basic Hourly Fee Schedule

I. FORMAL NOTICES: All notices herein provided to be given, or which may be given, by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, postage prepaid. In the instance of termination of this Agreement, notice shall be sent by certified mail, addressed as follows:

Deputy Director, Department of Municipal Development
City of Albuquerque
P.O. Box 1293
Albuquerque, New Mexico 87103

Firm Name/Address Here

Nothing herein contained shall preclude the giving of any such written notice by personal service. The address to which notices shall be mailed to either party may be changed by written notice given by such party to the other as hereinabove provided. In addition, nothing contained herein shall preclude the transmission of routine correspondence, messages, and information between the respective parties to this agreement, either at the project site or at the home offices of either party, or by an official of either party or their representatives.

J. ETHICS AND CAMPAIGN PRACTICES: The Landscape Architect agrees to provide the Board of Ethics and Campaign Practices of the City of Albuquerque (the "Board") or its investigator with any records or information pertaining in any manner to this Agreement, or both, whenever such records or information are within the Landscape Architect's custody, are germane to an investigation authorized by the Board, and are requested by the Board. The Landscape Architect further agrees to appear as a witness before the Board as required by the Board in hearings concerning ethics or campaign practices charges heard by the Board. The Landscape Architect agrees to require that all sub consultants employed by the Landscape Architect for services performed for this Agreement shall agree to comply with the provisions of this paragraph. The Landscape Architect and its subconsultants shall not be compensated under this Agreement for its time or any costs incurred in complying with this paragraph.

- K. CONFLICT OF INTEREST:** The Landscape Architect warrants that it currently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Landscape Architect further covenants that, in the performance of this Agreement, no person having any such interest shall be employed by the Landscape Architect. The Landscape Architect also agrees that neither it nor anyone employed by it shall have an interest, direct or indirect, in any company hired for the Project as Contractor, subcontractor, supplier, or manufacturer, except for those areas of construction for which the City provides construction phase inspection that is independent of the Landscape Architect.
- L. LIMIT ON AUTHORITY:** The Landscape Architect agrees not to purport to bind the City to any obligation not assumed herein by the City, unless the Landscape Architect has express written authority to do so, and then only within the strict limits of that authority.
- M. ADMINISTRATION OF THE AGREEMENT:** The City's Chief Administrative Officer, or authorized representative thereof, shall administer this Agreement for the City and the Landscape Architect agrees to follow the City's Capital Implementation Program Procedures which are in effect on the date of the City's execution of this Agreement.
- N. DISCLOSURE:** The Landscape Architect hereby affirms that within the two (2) years preceding the execution of this Agreement, neither the Landscape Architect nor any of the Landscape Architect's officers, agents or employees have made or agreed to make any valuable gift whether in the form of service, loan, thing or promise to any person or any of the person's immediate family, having the duty to recommend, the right to vote upon, or any other direct influence on the selection of firms or persons to provide professional architectural, engineering, landscape architectural, and other related services to the City. Campaign contributions, as defined by the Election Code of the City Charter, shall not be considered as a valuable gift for the purposes of this Agreement.
- O. LEGAL SERVICES:** The Landscape Architect shall not be entitled to receive payment pursuant to the terms of this Agreement or otherwise for legal services the Landscape Architect procures or employs for any matter related to the study, design, and the construction of the Project except when advance written approval, which specifies the scope of such legal services, is given by the City Attorney.
- P. REAL PROPERTY APPRAISAL AND ACQUISITION:** The Landscape Architect shall not be entitled to receive payment pursuant to the terms of this Agreement or otherwise for providing services of real property appraisal or acquisition and is expressly prohibited from obtaining appraisals of real property or instituting or causing to be instituted any negotiations or legal proceeding of any nature related to the acquisition of real property as part of the Landscape Architect's services under this Agreement.
- Q. SUBSEQUENT CONFLICTS OF INTEREST:** Landscape Architect agrees not to serve in the capacity of Landscape Architect, Consultant, Expert, or Expert Witness for any party to litigation or pending litigations holding an adverse position to, or claim against, the City on the same subject matter for which the Landscape Architect performs services pursuant to the terms of this Agreement.

ARTICLE XII INSURANCE

The Landscape Architect shall procure and maintain at its expense until final payment by the City for services covered by this Agreement, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Agreement, whether performed by it or its agents. Before commencing the work, the Landscape Architect shall furnish to the City a certificate in a form satisfactory to the City showing that it has complied with this Article. Such certificate is required in addition to a copy of each insurance policy required in this article. Various types of required insurance may be written in one or more policies. Kinds and amounts of insurance required are as follows:

- A. COMMERCIAL GENERAL LIABILITY INSURANCE INCLUDING AUTOMOBILE:** Commercial general liability and automobile insurance policies with liability limits in amounts not less than \$1,000,000.00 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence, for each policy shall be required. Said policies of insurance shall be in effect for the term of this Agreement and include coverage for all operations performed for the City by the Landscape Architect, coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work, and contractual liability coverage shall not exclude the indemnification provisions (including but not limited to Article IX) of this Agreement. The City shall be named an additional insured on the Commercial General Liability Insurance policy on a primary on-contributory basis. This insurance will be primary and will not seek contribution from any other insurance available to the additional insured.

- B. WORKER'S COMPENSATION INSURANCE:** Worker's Compensation Insurance in accordance with the provisions of the Workers' Compensation Act, Sections 52-1-1, et seq., NMSA 1978.

- C. PROFESSIONAL LIABILITY INSURANCE:**
 - 1. Professional liability insurance in an amount of not less than \$250,000 in the aggregate, provided however, that there shall not be a per claim limit of less than \$250,000. Such policy shall be in effect for the term of this Agreement (the "Basic Professional Liability Insurance"),

 - 2. A policy for "claims made" coverage shall satisfy the requirements of this section, only when coverage is provided for the entire time of the performance of this contract and for one (1) year thereafter, and
 - (a) All insurance policies shall allow the Architect to extend the time in which a claim may be made for one (1) year, or for a period equal to the time remaining during which insurance is required by this contract after the cancellation of the policy, whichever is greater, for occurrences or claims that may arise during the term of the policy, and;

(b) Each new policy shall provide for an inception (or retroactive) date that is the same as the initial effective date of this Agreement, provided that subsections C.2(a) and C.2(b) will not both be required as long as continuous coverage is provided for the time set forth above.

D. COSTS OF INSURANCE AND INCREASED LIMITS: In the event the City elects to require additional insurance coverage, the cost directly incurred by the Landscape Architect which is in addition to the Landscape Architect's Basic Professional Liability Insurance shall be a direct reimbursable expense (additional insurance premium cost only), which shall be paid by the City. If, during the term of this Agreement, the City requires the Landscape Architect to increase the minimum limits of any insurance required herein, an adjustment in the Landscape Architect's compensation will be made in the amount of the actual cost of additional insurance attributable directly to this Agreement.

E. The City reserves the right to review copies of all required insurance policies and amendments or replacement policies at any time.

ARTICLE XIII DISCRIMINATION PROHIBITED

In performing the services required hereunder, the Landscape Architect shall not discriminate against any individual on the basis of race, color, religion, sex, sexual orientation, national origin or ancestry, age, or physical handicap.

ARTICLE XIV MULTI-PHASE CONSTRUCTION CONTRACTS

Where multi-phase construction contracts, other than multi-phase construction contracts that are specifically provided in this Agreement, are deemed to be in the best interest of the City and are so ordered in writing by the City, then a supplement to this Agreement shall be negotiated between the Landscape Architect and the City.

ARTICLE XV DISPUTE RESOLUTION

A. MEDIATION PROCEDURES: In the event a dispute concerning this Agreement arises, any party seeking relief shall mail or deliver a written demand to the other party, describing the relief sought and the basis for such relief. The City and the Landscape Architect shall attempt to informally negotiate a resolution of such demand. In the event the negotiations fail or no resolution is reached within fifteen days after receipt of the demand, whichever first occurs, the dispute shall be submitted to non-binding mediation. Each party shall pay in equal shares all fees and costs assessed by the mediator. Unless agreed in writing otherwise, the failure of any party making a demand to request mediation within thirty days of the original submission of the demand shall be deemed a waiver of mediation requirements herein, and the parties shall proceed pursuant to Section B of this Article. In the event the dispute is submitted to arbitration, the parties may enter into a written agreement to stay arbitration pending completion of mediation.

- B. ARBITRATION:** If mediation is not successful, any dispute concerning this Agreement, or the performance, interpretation, or breach thereof, shall then be settled by arbitration pursuant to the Construction Industry Arbitration Rules ("Rules") of the American Arbitration Association ("AAA") then in effect. The arbitrator(s) shall have no power to render an award, which has the effect of altering or amending or changing in any way any provision of this Agreement. The award of the arbitrator(s) shall be final and binding. Judgment upon any such award shall be rendered only by any state or federal court sitting in Bernalillo County, New Mexico. Any and all arbitration proceedings, including discovery ordered by the arbitrator(s) shall take place in Bernalillo County, New Mexico or in the County in which the construction site, which is the subject of this Agreement, is located. In the event this Agreement requires a study phase only, the arbitration proceedings shall be held only in Bernalillo County. In any such arbitration, the arbitrator(s) shall have the powers of a court having jurisdiction as well as all of the powers pursuant to the Rules. Without limiting the generality of the foregoing, the arbitrator(s) shall have the power to issue orders for injunctive relief.
- C. INJUNCTIVE RELIEF:** The City and the Landscape Architect consent and agree to the issuance of any temporary restraining order or preliminary injunction, by any Court sitting in Bernalillo County having jurisdiction, upon the application of any party to the arbitration. Such authority of a Court to order injunctive relief shall terminate upon completion of the appointment of an arbitrator(s) who will then have jurisdiction to issue orders for injunctive relief. Any party to the arbitration may apply to the arbitrator(s) for issuance of an injunction or similar relief, and such application shall be heard by the arbitrator(s) within ten (10) days after the application is filed with AAA. Any Court in Bernalillo County, New Mexico having jurisdiction to render an order confirming the award of the arbitrator(s) shall have jurisdiction to enter an order confirming the issuance of such injunction and making it an order of the Court.
- D. CONSOLIDATION AND JOINDER:** The City and the Landscape Architect consent to the joinder in arbitration of any party necessary for the complete resolution of all disputes arising out of the performance of contracts pertaining to the Work of the Project, including but not limited to the Landscape Architect and its subcontractors and subconsultants and the Contractor and its subcontractors and suppliers. The City and the Landscape Architect also consent to the consolidation of any arbitration under this Agreement with any other arbitration involving the performance of contracts pertaining to the Work of the Project.
- E. ARBITRATION PROVISION REQUIRED:** In the event the City enters into a construction contract for the project, the City shall require this Dispute Resolution provision (with appropriate changes in the description of the parties) in its contract with the Contractor.
- F. DEMAND:** Notice of demand for arbitration must be filed in writing with the other parties to this Dispute Resolution Article and with AAA. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations.

ARTICLE XVI CONSTRUCTION CONTRACTOR INDEMNIFICATION

The City will require in the general conditions of any construction contract, language which states that the construction contractor is required to defend, indemnify, save and hold harmless the City and the Landscape Architect and their officers, agents, and employees from and against all suits, actions or claims of any character brought because of any injury or damage received or sustained by any person, persons or property arising out of the performance of the work of the Contractor, or by reason of any act or omission, neglect or misconduct of the Contractor, his agent or employees or any Subcontractor, his agents or employees. The City and the Landscape Architect shall also be named as additional insured on the Contractor's commercial general liability insurance policy.

ARTICLE XVII HAZARDOUS MATERIALS

Unless otherwise stated in Exhibit I, the Landscape Architect shall not be responsible for identification, handling, containment, abatement, or in any other respect, for any asbestos or hazardous material if such is present in connection with the project. In the event that the City becomes aware of the presence of asbestos or hazardous material at the job site, the City shall be responsible for complying with all applicable federal and state rules and regulations, and shall immediately notify the Landscape Architect, who shall then be entitled to cease any of its services that may be affected by such presence, without any liability to the Landscape Architect arising therefrom. If the Landscape Architect becomes aware of the presence of asbestos or hazardous material at the job site, the Landscape Architect shall immediately cease any of its services that may be affected by such presence, without any liability arising therefrom, and inform the City of such materials presence. The Landscape Architect will work with the City, where possible, to help find the appropriate personnel, whether it be the City's staff, the Landscape Architect's staff, or another consultant, who can help the City with the determination of what to do with the asbestos or hazardous materials.

ARTICLE XVIII RELY ON DATA

The Landscape Architect shall indicate to the City the information needed for rendering of services hereunder. The City shall provide to the Landscape Architect such information as is available to the City and the City's consultants and contractors, and the Landscape Architect shall be entitled to rely upon the accuracy and completeness thereof. The Landscape Architect shall review information provided by the City and others and shall give the City an opinion of the risk associated with reliance on such information. The City understands that it is impossible to eliminate all risk, because of the inherent limitation of the techniques available to develop the information, or because of errors, omissions or inaccuracies, which may exist in the information. This article does not modify Article VIII of this Agreement.

ARTICLE XIX CONSTRUCTION JOB SITE SAFETY

The Landscape Architect shall endeavor to guard the City against defects and deficiencies in the work of the Contractor and give prompt notice to the City if the Landscape Architect observes or

otherwise becomes aware of any fault or defect in the Project or non-conformance with the Contract Documents on the basis of on-site observations as a Landscape Architect. The Landscape Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Landscape Architect shall not be responsible for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, and shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

**ARTICLE XX
APPROVAL REQUIRED**

This Agreement shall not become binding or effective until approved by the City's Chief Administrative Officer or his authorized representative.

IN WITNESS WHEREOF, the City and the Landscape Architect have executed this Agreement as of the day and year last entered below.

CITY OF ALBUQUERQUE

LANDSCAPE ARCHITECT

Sarita Nair, JD, MCRP
Chief Administrative Officer

By: _____

Date: _____

Title: _____

Recommended by:

Date: _____

Patrick Montoya, Director
Department of Municipal Development

NMRLA Certificate No: _____

State Taxation and Revenue Department Taxpayer
Identification Number: _____

Date: _____

Federal Taxpayer Identification Number: _____

Recommended by:

Director
End User Department (if not DMD)

Date: _____