**SERVICE AGREEMENT**
**ANNUAL EXTENSION – YEAR 2 OF 4**
**RFP No. 14-15-146 Landscape Architectural Services**

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Pursuant to Section 7, EXTENSION, CHANGES AND AMENDMENTS of the Landscape Architectural Services Service Agreement (Agreement) dated August 14, 2015 between the City of Las Cruces (City) and Sites Southwest, LLC (Contractor), the City and Contractor agree to renew the Agreement for a period of one (1) year, to begin August 14, 2016 and terminate August 13, 2017. All other terms and conditions, including any amendments, of the Agreement remain the same.

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AGREED:

SITES SOUTHWEST, LLC

Signature — Date: 8-15-16

George Radnovich, FASLA, Principal
Printed Name/Title

CITY OF LAS CRUCES

Deb Smith — Date: 8-17-16

Deb Smith
Purchasing Manager

# AIA® Document B102™ – 2007

## *Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services*

**AGREEMENT** made as of the Fourteenth day of August in the year Two Thousand Fifteen
*(In words, indicate day, month and year.)*

**BETWEEN** the Owner:
*(Name, legal status, address and other information)*

City of Las Cruces
P. O. Box 20000 (mail)
700 North Main
Las Cruces, New Mexico 88001
Telephone Number: (575) 541-2502
Fax Number: (575) 541-2904

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

Sites Southwest, LLC.
121 Tijeras NE, Suite 3100
Albuquerque, NM 87102
Telephone Number: (505) 822-8200
Fax Number: (505) 822-8282

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

Term Contract for Landscape Architectural Services; RFP No. 14-15-146
Various City of Las Cruces facilities
One year term contract for landscape architectural services as outlined in RFP 14-15-146; renewable up to three times in succeeding one year increments.

The Owner and Landscape Architect agree as follows.

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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## ARTICLE 1 LANDSCAPE ARCHITECT'S RESPONSIBILITIES

**§ 1.1** The Landscape Architect shall provide the following professional services:
*(Describe the scope of the Architect's services or identify an exhibit or scope of services document setting forth the Architect's services and incorporated into this document in Section 9.2)*

See Exhibit A (AIA Document B201-Exhibit A-2007); RFP 14-15- 146 Term Contract for Landscape Architectural Services

**§ 1.2** The Landscape Architect shall perform its services consistent with the professional skill and care ordinarily provided by landscape architects practicing in the same or similar locality under the same or similar circumstances. The Landscape Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

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

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

**§ 1.5** The Landscape Architect shall maintain the following insurance for the duration of this Agreement.:
*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

**.1** Professional Liability

*(Paragraphs deleted)*

Errors and Omissions Professional Liability insurance is required of the Landscape Architect in the amount of $1,000,000.00

## ARTICLE 2 OWNER'S RESPONSIBILITIES

**§ 2.1** Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request

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

**§ 2.2** The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Landscape Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Landscape Architect's services.

**§ 2.3** The Owner shall coordinate the services of its own consultants with those services provided by the Landscape Architect. Upon the Landscape Architect's request, the Owner shall furnish copies of the scope of consulting services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Landscape Architect to furnish them as an Additional Service, when the Landscape Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

**§ 2.4** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

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

## ARTICLE 3 COPYRIGHTS AND LICENSES

**§ 3.1** The Landscape Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Landscape Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

**§ 3.2** The Landscape Architect and the Landscape Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Landscape Architect and the Landscape Architect's consultants.

**§ 3.3** Upon execution of this Agreement, the Landscape Architect grants to the Owner a nonexclusive license to use the Landscape Architect's Instruments of Service solely and exclusively for the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Landscape Architect shall obtain similar nonexclusive licenses from the Landscape Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services for the Project. If the Landscape Architect rightfully terminates this Agreement for cause as provided in Sections 5.3 and 5.4, the license granted in this Section 3.3 shall terminate.

**§ 3.3.1** In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Landscape Architect and Landscape Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Landscape Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 3.3.1.

**§ 3.4** Except for the licenses granted in this Article 3, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Landscape Architect. Any unauthorized


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use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Landscape Architect and the Landscape Architect's consultants.

## ARTICLE 4 CLAIMS AND DISPUTES

### § 4.1 GENERAL

**§ 4.1.1** The Owner and Landscape Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Landscape Architect waive all claims and causes of action not commenced in accordance with this Section 4.1.1.

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

**§ 4.1.3** The Landscape Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 5.7.

### § 4.2 MEDIATION

**§ 4.2.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to resolution in accordance with this Article. The aggrieved party shall notify the other party of the dispute within reasonable time after a potential dispute is identified by either party. Thereafter, each party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation. Should the matter remain unresolved after direct negotiation, then the dispute shall be resolved by mediation in accordance with the New Mexico Public Works Mediation Act, regardless of this Agreement being an agreement for architect's services and not for a public works project. The parties shall agree on the mediator.

**§ 4.2.2** If the parties do not resolve a dispute through mediation pursuant to this Section 4.2, the method of binding dispute resolution shall be the following:
*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

[ X ] Arbitration pursuant to Section 4.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

*(Paragraphs deleted)*

### § 4.3 ARBITRATION

**§ 4.3.1** Either party shall pursue resolution of the dispute by arbitration in accordance with the New Mexico Uniform Arbitration Act; provided however in the event the parties are unable to reach agreement to arbitrate under terms reasonably acceptable to both parties, either party may pursue resolution in any court having jurisdiction.

*(Paragraphs deleted)*

### § 4.3.4 CONSOLIDATION OR JOINDER

**§ 4.3.4.1** Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration


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permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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

**§ 4.3.4.3** The Owner and Landscape Architect grant to any person or entity made a party to an arbitration conducted under this Section 4.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Landscape Architect under this Agreement.

## ARTICLE 5 TERMINATION OR SUSPENSION

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

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

**§ 5.3** If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Landscape Architect, the Landscape Architect may terminate this Agreement by giving not less than seven days' written notice.

**§ 5.4** Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

**§ 5.5** The Owner may terminate this Agreement upon not less than seven days' written notice to the Landscape Architect for the Owner's convenience and without cause.

**§ 5.6** In the event of termination not the fault of the Landscape Architect, the Landscape Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 5.7.

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

**§ 5.8** The Owner's rights to use the Landscape Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 3 and Section 6.3.

## ARTICLE 6 COMPENSATION

**§ 6.1** The Owner shall compensate the Landscape Architect for services described in Section 1.1 as set forth below, or in the attached exhibit or scope document incorporated into this Agreement in Section 9.2.
*(Insert amount of, or basis for, compensation or indicate the exhibit or scope document in which compensation is provided for.)*


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Compensation shall be based on the Landscape Architect's fee proposal as itemized in Exhibit B consisting of Matrix One and Matrix Two; and as subsequently negotiated on an individual Project Order basis.

**§ 6.2** Reimbursable Expenses are in addition to compensation for the Landscape Architect's professional services and include expenses incurred by the Landscape Architect and the Landscape Architect's consultants directly related to the Project, as follows:

- **.1** Transportation and authorized out-of-town travel and subsistence away from Las Cruces; excluding any Landscape Architect's consultants not residents of Las Cruces, when traveling to Las Cruces away from their respective locales;
- **.2** Project Web sites, and extranets;
- **.3** Fees paid for securing approval of authorities having jurisdiction over the Project, and fees paid for securing certifications from certifying agencies and organizations;
- **.4** Printing, reproductions, plots, standard form documents only when intended for distribution to the Owner for the Owner's review and or subsequent distribution to bidders on behalf of the Owner; or for delivery to authorities having jurisdiction over the Project;
- **.5** Postage, handling and delivery of documents only when intended for distribution to the Owner or on behalf of the Owner for delivery to authorities having jurisdiction over the Project;
- **.6** Not used.
- **.7** Renderings, models, and mock-ups not prepared by the Landscape Architect, professional photography, and presentation materials requested by the Owner;
- **.8** Landscape Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Landscape Architect's consultants;
- **.9** All taxes levied on professional services and on reimbursable expenses;
- **.10** Site office expenses; and
- **.11** Other similar Project-related expenditures when approved in advance of the expenditure by the Owner.

**§ 6.2.1**
*(Paragraphs deleted)*
For Reimbursable Expenses the compensation shall be the expenses incurred by the Landscape Architect and the Landscape Architect's consultants plus an administrative fee of ten percent ( 10% ) of the expenses incurred.

*(Paragraph deleted)*
**§ 6.3 COMPENSATION FOR USE OF LANDSCAPE ARCHITECT'S INSTRUMENTS OF SERVICE**
If the Owner terminates the Landscape Architect for its convenience under Section 5.5, or the Landscape Architect terminates this Agreement under Section 5.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Landscape Architect's Instruments of Service solely for purposes of the Project as follows:

Compensation for use of Landscape Architect's Instruments of Service shall be negotiated upon such termination.

**§ 6.4 PAYMENTS TO THE LANDSCAPE ARCHITECT**
**§ 6.4.1** An initial payment of zero ($ 0 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

**§ 6.4.2** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Landscape Architect's invoice. Amounts unpaid thirty ( 30 ) days after the invoice date shall bear interest at the rate at the rate allowed by New Mexico statutes.
*(Insert rate of monthly or annual interest agreed upon.)*

N/A

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


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§ **6.4.4** Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

## ARTICLE 7 MISCELLANEOUS PROVISIONS

§ **7.1** This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 4.3.

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

§ **7.3** The Owner and Landscape Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Landscape Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ **7.4** If the Owner requests the Landscape Architect to execute certificates, the proposed language of such certificates shall be submitted to the Landscape Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Landscape Architect to execute consents reasonably required to facilitate assignment to a lender, the Landscape Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Landscape Architect for review at least 14 days prior to execution. The Landscape Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ **7.5** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Landscape Architect.

§ **7.6** Unless otherwise required in this Agreement, the 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.

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

§ **7.8** If the Landscape Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

## ARTICLE 8 SPECIAL TERMS AND CONDITIONS

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

As allowed by written amendment or modification subsequent to the signing of this Agreement.

## ARTICLE 9 SCOPE OF THE AGREEMENT

§ **9.1** This Agreement represents the entire and integrated agreement between the Owner and the 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 both Owner and Landscape Architect.

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



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.1 AIA Document B102–2007, Standard Form Agreement Between Owner and Landscape Architect

.2 City of Las Cruces RFP No. 14-15-146 Term Contract for Landscape Architectural Services; including all addenda and schedules issued with it.

.3 Other documents:
*(List other documents, including the Landscape Architect's scope of services document, hereby incorporated into the Agreement.)*
-Proposal submitted in response to CLC RFP 14-15-146 by Sites Southwest, LLC. of Albuquerque, NM, dated April 15, 2015, by reference.
- Cost Matrix 1 and 2 prepared by Sites Southwest, LLC. of Albuquerque, NM "Cost Proposal" included with proposal submitted in response CLC RFP 14-15-146, dated April 15, 2015, by reference. ; attached to this agreement as Exhibit B.

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

**OWNER** : City of Las Cruces

Deb Smith
*(Signature)*

Purchasing Manager City of Las Cruces
*(Printed name and title)*

**LANDSCAPE ARCHITECT** – Sites Southwest, LLC.

*(Signature)*

GEORGE RADNOVICH, principal
*(Printed name and title)*

Approved as to form:

City Attorney

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# *Additions and Deletions Report for*

*AIA® Document B102™ – 2007*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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**PAGE 1**

**AGREEMENT** made as of the Fourteenth day of August in the year Two Thousand Fifteen

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City of Las Cruces
P. O. Box 20000 (mail)
700 North Main
Las Cruces, New Mexico 88001
Telephone Number: (575) 541-2502
Fax Number: (575) 541-2904
and the Landscape Architect:

...

Sites Southwest, LLC.
121 Tijeras NE, Suite 3100
Albuquerque, NM 87102
Telephone Number: (505) 822-8200
Fax Number: (505) 822-8282

...

Term Contract for Landscape Architectural Services; RFP No. 14-15-146
Various City of Las Cruces facilities
One year term contract for landscape architectural services as outlined in
RFP 14-15-146; renewable up to three times in succeeding one year increments.
The Owner and Landscape Architect agree as follows.

**PAGE 2**

**1 LANDSCAPE ARCHITECT'S RESPONSIBILITIES**

...

~~**ARTICLE 1 ARCHITECT'S RESPONSIBILITIES**~~
**ARTICLE 1 LANDSCAPE ARCHITECT'S RESPONSIBILITIES**
**§ 1.1** The Landscape Architect shall provide the following professional services:

...

See Exhibit A (AIA Document B201-Exhibit A-2007); RFP 14-15- 146 Term Contract for Landscape Architectural Services

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§ 1.2 The Landscape Architect shall perform its services consistent with the professional skill and care ordinarily provided by landscape architects practicing in the same or similar locality under the same or similar circumstances. The Landscape Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

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

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

§ 1.5 The Landscape Architect shall maintain the following insurance for the duration of this ~~Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:~~Agreement.:

...

.1 ~~General~~ Professional Liability

~~.2 Automobile Liability~~

~~.3 Workers' Compensation~~

~~.4 Professional Liability~~

Errors and Omissions Professional Liability insurance is required of the Landscape Architect in the amount of $1,000,000.00

...

§ 2.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Landscape Architect, the Owner shall furnish the requested information as necessary and relevant for the Landscape Architect to evaluate, give notice of or enforce lien rights.

§ 2.2 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Landscape Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Landscape Architect's services.

§ 2.3 The Owner shall coordinate the services of its own consultants with those services provided by the Landscape Architect. Upon the Landscape Architect's request, the Owner shall furnish copies of the scope of consulting services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Landscape Architect to furnish them as an Additional Service, when the Landscape Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

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**PAGE 3**

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

...

**§ 3.1** The Landscape Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Landscape Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

**§ 3.2** The Landscape Architect and the Landscape Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Landscape Architect and the Landscape Architect's consultants.

**§ 3.3** Upon execution of this Agreement, the Landscape Architect grants to the Owner a nonexclusive license to use the Landscape Architect's Instruments of Service solely and exclusively for the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Landscape Architect shall obtain similar nonexclusive licenses from the Landscape Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services for the Project. If the Landscape Architect rightfully terminates this Agreement for cause as provided in Sections 5.3 and 5.4, the license granted in this Section 3.3 shall terminate.

**§ 3.3.1** In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Landscape Architect and Landscape Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Landscape Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 3.3.1.

**§ 3.4** Except for the licenses granted in this Article 3, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Landscape Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Landscape Architect and the Landscape Architect's consultants.

**PAGE 4**

**§ 4.1.1** The Owner and Landscape Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Landscape Architect waive all claims and causes of action not commenced in accordance with this Section 4.1.1.

**§ 4.1.2** To the extent damages are covered by property insurance, the Owner and Landscape Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2007, General Conditions of the Contract for Construction, if applicable. The Owner or the Landscape Architect, as

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appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

**§ 4.1.3** The Landscape Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 5.7.

...

**§ 4.2.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to ~~mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.~~resolution in accordance with this Article. The aggrieved party shall notify the other party of the dispute within reasonable time after a potential dispute is identified by either party. Thereafter, each party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation. Should the matter remain unresolved after direct negotiation, then the dispute shall be resolved by mediation in accordance with the New Mexico Public Works Mediation Act, regardless of this Agreement being an agreement for architect's services and not for a public works project. The parties shall agree on the mediator.

**§ 4.2.2** ~~The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~If the parties do not resolve a dispute through mediation pursuant to this Section 4.2, the method of binding dispute resolution shall be the following:
*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

[ X ] Arbitration pursuant to Section 4.3 of this Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

~~**§ 4.2.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

~~**§ 4.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 4.2, the method of binding dispute resolution shall be the following:~~
~~*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*~~

~~[ ] Arbitration pursuant to Section 4.3 of this Agreement~~

~~[ ] Litigation in a court of competent jurisdiction~~

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~~[ ] Other *(Specify)*~~

§ 4.3.1 ~~If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~ Either party shall pursue resolution of the dispute by arbitration in accordance with the New Mexico Uniform Arbitration Act; provided however in the event the parties are unable to reach agreement to arbitrate under terms reasonably acceptable to both parties, either party may pursue resolution in any court having jurisdiction.

~~§ 4.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~§ 4.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 4.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

**PAGE 5**

§ 4.3.4.3 The Owner and Landscape Architect grant to any person or entity made a party to an arbitration conducted under this Section 4.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Landscape Architect under this Agreement.

...

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

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

§ 5.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Landscape Architect, the Landscape Architect may terminate this Agreement by giving not less than seven days' written notice.

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§ 5.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Landscape Architect for the Owner's convenience and without cause.

§ 5.6 In the event of termination not the fault of the Landscape Architect, the Landscape Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 5.7.

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

§ 5.8 The Owner's rights to use the Landscape Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 3 and Section 6.3.

...

§ 6.1 The Owner shall compensate the Landscape Architect for services described in Section 1.1 as set forth below, or in the attached exhibit or scope document incorporated into this Agreement in Section 9.2.

**PAGE 6**

Compensation shall be based on the Landscape Architect's fee proposal as itemized in Exhibit B consisting of Matrix One and Matrix Two; and as subsequently negotiated on an individual Project Order basis.

§ 6.2 ~~COMPENSATION FOR REIMBURSABLE EXPENSES~~Reimbursable Expenses are in addition to compensation for the Landscape Architect's professional services and include expenses incurred by the Landscape Architect and the Landscape Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence away from Las Cruces; excluding any Landscape Architect's consultants not residents of Las Cruces, when traveling to Las Cruces away from their respective locales;
- .2 Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project, and fees paid for securing certifications from certifying agencies and organizations;
- .4 Printing, reproductions, plots, standard form documents only when intended for distribution to the Owner for the Owner's review and or subsequent distribution to bidders on behalf of the Owner; or for delivery to authorities having jurisdiction over the Project;
- .5 Postage, handling and delivery of documents only when intended for distribution to the Owner or on behalf of the Owner for delivery to authorities having jurisdiction over the Project;
- .6 Not used.
- .7 Renderings, models, and mock-ups not prepared by the Landscape Architect, professional photography, and presentation materials requested by the Owner;
- .8 Landscape Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Landscape Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures when approved in advance of the expenditure by the Owner.

§ 6.2.1 ~~Reimbursable Expenses are in addition to compensation for the Architect's professional services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:~~

- ~~.1 Transportation and authorized out-of-town travel and subsistence;~~
- ~~.2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;~~

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~~.3 Fees paid for securing approval of authorities having jurisdiction over the Project;~~
~~.4 Printing, reproductions, plots, standard form documents;~~
~~.5 Postage, handling and delivery;~~
~~.6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~
~~.7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;~~
~~.8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;~~
~~.9 All taxes levied on professional services and on reimbursable expenses;~~
~~.10 Site office expenses; and~~
~~.11 Other similar Project-related expenditures.~~For Reimbursable Expenses the compensation shall be the expenses incurred by the Landscape Architect and the Landscape Architect's consultants plus an administrative fee of ten percent ( 10% ) of the expenses incurred.

~~§ 6.2.2 For Reimbursable Expenses, the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus an administrative fee of percent ( %) of the expenses incurred.~~

**§ 6.3**
**~~COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE~~COMPENSATION FOR USE OF LANDSCAPE ARCHITECT'S INSTRUMENTS OF SERVICE**
If the Owner terminates the Landscape Architect for its convenience under Section 5.5, or the Landscape Architect terminates this Agreement under Section 5.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Landscape Architect's Instruments of Service solely for purposes of the Project as follows:

Compensation for use of Landscape Architect's Instruments of Service shall be negotiated upon such termination.

**§ 6.4 ~~PAYMENTS TO THE ARCHITECT~~PAYMENTS TO THE LANDSCAPE ARCHITECT**
**§ 6.4.1** An initial payment of zero ($ 0 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

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

...

~~%~~ N/A

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

**PAGE 7**

**§ 7.3** The Owner and Landscape Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Landscape Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

**§ 7.4** If the Owner requests the Landscape Architect to execute certificates, the proposed language of such certificates shall be submitted to the Landscape Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Landscape Architect to execute consents reasonably required to facilitate assignment to a lender, the Landscape Architect shall execute all such consents that are consistent with this

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Agreement, provided the proposed consent is submitted to the Landscape Architect for review at least 14 days prior to execution. The Landscape Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

**§ 7.5** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Landscape Architect.

**§ 7.6** Unless otherwise required in this Agreement, the 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.

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

**§ 7.8** If the Landscape Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

...

As allowed by written amendment or modification subsequent to the signing of this Agreement.

...

**§ 9.1** This Agreement represents the entire and integrated agreement between the Owner and the 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 both Owner and Landscape Architect.

**PAGE 8**

.1 AIA Document B102–2007, Standard Form Agreement Between Owner and Landscape Architect

.2 ~~AIA Document E201–2007, Digital Data Protocol Exhibit, if completed, or the following:~~City of Las Cruces RFP No. 14-15-146 Term Contract for Landscape Architectural Services; including all addenda and schedules issued with it.

...

*(List other documents, including the Landscape Architect's scope of services document, hereby incorporated into the Agreement.)*
-Proposal submitted in response to CLC RFP 14-15-146 by Sites Southwest, LLC. of Albuquerque, NM, dated April 15, 2015, by reference.
- Cost Matrix 1 and 2 prepared by Sites Southwest, LLC. of Albuquerque, NM "Cost Proposal" included with proposal submitted in response CLC RFP 14-15-146, dated April 15, 2015, by reference. ; attached to this agreement as Exhibit B.

...

**OWNER** : City of Las Cruces

**LANDSCAPE ARCHITECT** – Sites Southwest, LLC.

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Purchasing Manager City of Las Cruces

Deb Smith

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Approved as to form:

City Attorney

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## *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I, Soo Gyu Lee, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:05:52 on 08/05/2015 under Order No. 5277398258_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B102™ – 2007, Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

*(Signed)*

DCS Manager

*(Title)*

08/06/15

*(Dated)*

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