



## STANDARD FORM CONTRACT FOR PROFESSIONAL SERVICES BETWEEN LANDSCAPE ARCHITECT AND CLIENT

This Standard Form Contract for Professional Services (this “Agreement”) is made as by and between Tallgrass Landscape Architecture, LLC, of 413 North 4<sup>th</sup> Street, Custer, SD 57730 (“Tallgrass”) and the Client (identified below) for professional services provided to Client in connection with the Project identified below. This Agreement shall be dated as of the date of the last signature below.

### 1. Client Information

City Of Lead

CORPORATION LIMITED LIABILITY COMPANY MUNICIPALITY GOVERNMENT OR OTHER

801 W Main Street, Lead, SD 57754

ADDRESS

Robin Lucero, City Planner

(605) 580-0172

robinl@cityoflead.com

CONTACT PERSON

PHONE NUMBER

EMAIL

### 2. Project Information

Project Name: Prospect Park Schematic Design

Project Location: South Rim Parks, Lead, SD

Client Project No. \_\_\_\_\_

Internal Project No. Tallgrass # 2025-003

Other Information: NA

### 3. Services

Subject to the terms and conditions contained herein, Tallgrass hereby agrees to provide the services (the “Services”) more fully detailed on the attached Exhibit A. The Services provided hereunder, taken collectively, may sometimes be referred to as the “Project”. Tallgrass is expressly permitted to utilize its own employees or to engage subcontractors for the performance of the Services, as determined in Tallgrass’s sole discretion.

### 4. Change Orders

Any changes to the scope of the Services shall be documented in a written change order (the “Change Order”) signed by Tallgrass and Client and attached to this Agreement. The Change

Order shall identify in reasonable detail the change to the scope of Services and any corresponding change to the Project Cost, including timing of payment of the increase. Any Change Order shall be in substantially similar form as that attached hereto as Exhibit B.

## **5. Work Product.**

Any and all drawings, designs, schematics, and documents ("Work Product") developed in whole or in part by Tallgrass in connection with the Project shall be the exclusive property of Tallgrass. Upon request, Client agrees to execute all documents necessary to perfect the exclusive ownership of Tallgrass to the Work Product. Subject to the payment by the Client of the Project Cost and all other amounts owed to Tallgrass hereunder, Tallgrass grants to Client an irrevocable, non-exclusive license to reproduce the design materials solely for the construction of the Project and for information and reference with respect to the use of the Project. No other use of the Work Product shall be permitted.

## **6. Payment for Services; Reimbursement of Expenses**

In exchange for the Services provided hereunder, Client agrees to pay Tallgrass the sum listed in Exhibit C (the "Project Cost and Payment Schedule"), which Project Cost may be subject to adjustment as provided for in this Agreement. The Project Cost shall be due and payable as provided for on the Payment Schedule, attached hereto as Exhibit C. Any late payment shall accrue interest at a rate of 1.5% per month until paid in full.

In addition to the Project Cost, Client agrees to promptly reimburse Tallgrass for certain Reimbursable Expenses upon receipt of an invoice therefor. Reimbursable Expenses include, but are not limited to, travel expenses, costs of reproduction of documents, postage, service of professional consultants which cannot be quantified at the time of contracting, and other, similar, direct Project-related expenses. All charges for Reimbursable Expenses shall be at Tallgrass's cost, plus an administrative fee of 0%. If Client fails to reimburse Tallgrass for the Reimbursable Expenses within 30 days of the receipt of an invoice, such expenses shall accrue interest at a rate of 1.5% per month until paid in full.

If the Project has not been completed within six months of the date of this Agreement through no fault of the Tallgrass, the Project Cost shall be equitably adjusted.

Client shall pay all fees required to secure jurisdictional approvals for the Project directly or if paid by Tallgrass, these fees shall be considered a Reimbursable Expense.

## **7. Performance Schedule**

The schedule for the performance of the Services under this Agreement is provided in the Performance Schedule attached hereto as Exhibit D, as adjusted from time to time as permitted under this Agreement. Significant schedule changes (greater than 30 days) may require proportionate reasonable adjustment of the fee.

## **8. Client Responsibilities**

Client agrees to cooperate with Tallgrass as reasonably necessary for Tallgrass to perform the Services contracted hereunder, including (i) providing Tallgrass data about the site and other

information on which the design is to be based as well as Client's budget parameters for the Project; (ii) providing Tallgrass and Tallgrass's employees and subcontractors with full, free, and safe access to the Project Location; (iii) promptly responding to questions related to the Project; (iv) promptly responding to written requests; and (v) cooperating as reasonably requested by Tallgrass on actual needs required to provide the Services and to facilitate the completion of the Project. Tallgrass shall be entitled to rely on the accuracy and completeness of information provided by the Client.

## **9. Standard of Care; Disclaimer of Warranties**

Tallgrass shall perform the Services consistent with the professional skill and care ordinarily provided by professionals in the same discipline practicing in the same or similar locality under the same or similar circumstances. Tallgrass represents that it and its employees have and shall maintain throughout the performance of the Services under this Agreement the requisite licenses, registrations, and/or certifications required for the performance of these Services in the jurisdiction in which the Project is located.

Tallgrass shall reasonably strive to propose designs and prepare documents consistent with the Client's budget parameters. If provided by Tallgrass as a part of the Services, opinions of probable construction costs are based on Tallgrass's familiarity with the landscape construction industry and are provided only to assist Client's budget planning. Such opinions shall not be construed to provide a guarantee or warranty that the actual construction costs will be within the Project budget parameters at the time construction bids are solicited or construction contracts are negotiated.

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY PROVIDED FOR ABOVE, TALLGRASS HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. CLIENT HEREBY WAIVES ANY RIGHT TO RECOVER OR REQUEST COMPENSATION FOR INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, SECONDARY, OR PUNITIVE DAMAGES, LOSS OF USE, DIMINUTION IN VALUE, OR DAMAGES FOR AGGRAVATION, PERSONAL INJURY, OR PAIN AND SUFFERING. IN NO EVENT SHALL TALLGRASS BE LIABLE TO CLIENT IN EXCESS OF THE TOTAL PROJECT COST.

## **10. Independent Contractor**

Tallgrass is being hired as an independent contractor and not an employee or agent of Client. Neither party shall have the right or authority to act on behalf of the other or bind the other party in any way. Tallgrass shall have the exclusive control of the manner and means of performing its obligations under this Agreement.

## **11. Force Majeure**

If performance of this Agreement or any obligation under this Agreement is prevented, restricted, or interfered with by causes beyond Tallgrass's reasonable control ("Force Majeure"), and if Tallgrass gives Client prompt written notice of such event, then the obligations of Tallgrass shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, fire, explosion, vandalism, storm or other similar occurrence, material delays or work stoppages. Tallgrass shall use reasonable efforts under the

circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased.

## **12. Dispute Resolution**

- 12.1** If a dispute arises out of or relates to this Agreement, the parties shall endeavor to resolve their differences first through direct discussions between the parties or their representatives who shall have authority to settle the dispute. If the dispute has not been settled within 14 days of the initial discussions, the parties shall submit the dispute to mediation before initiating litigation. The mediation shall be conducted by a mutually selected mediator. A party shall make a demand for mediation within a reasonable time after a claim or dispute arises, and the parties agree to mediate in good faith. In no event shall any demand for mediation be made after such claim or dispute would be barred by applicable law. Mediation fees shall be shared equally.
- 12.2** Each party reserves the right to seek final resolution in a court of law of competent jurisdiction.
- 12.3** Nothing in these provisions shall be interpreted to limit rights or remedies not expressly waived under applicable lien laws.

## **13. Termination**

This Agreement may be terminated by either party if the other party fails to substantially perform any material provision, term, or condition of this Agreement; provided, however, prior to such termination the defaulting party shall be provided written notice detailing the default and shall be given no less than seven (7) days to cure the default before such termination is effective. Furthermore, if such default is not of a nature that it can be cured within the seven (7) days, as long as the defaulting party commences to cure the default within the time period and diligently pursues to cure the default, this Agreement shall remain in full force and effect.

If the Client terminates this Agreement pursuant to the above, Tallgrass's only liability to Client shall be to refund any unearned portion of the Project Cost which has already been paid to Tallgrass (based on percentage completion), if any, which amount shall be returned to Client within 30 days of the termination of this Agreement.

If the Tallgrass terminates this Agreement pursuant to the above, Client shall immediately pay to Tallgrass any and all amounts outstanding under this Agreement.

## **14. Miscellaneous**

- 14.1** Notices required pursuant to this Agreement shall be sufficient if delivered personally or by registered or certified mail, return receipt requested, at the addresses indicated on the first page of this Agreement.
- 14.2** This Agreement may be executed by email or facsimile and in one or more counterparts.

- 14.3 This Agreement supersedes all proposals and negotiations and constitutes the entire agreement between Tallgrass and Client with respect to the Services.
- 14.4 This Agreement can only be modified by written agreement of Client and Tallgrass.
- 14.5 This Agreement shall be governed by the laws of the state of South Dakota, without regard to its conflicts of laws provisions. The exclusive jurisdiction and venue for all legal actions arising out of or related to this Agreement shall be in courts of competent subject matter jurisdiction in Custer County, South Dakota, and the parties hereby consent to the jurisdiction of such courts.
- 14.6 In the event that one or more of the provisions of this Agreement shall be held invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not be affected.
- 14.7 Neither party shall assign their interest in this Agreement without the express written consent of the other, except to the assignment of proceeds.
- 14.8 Nothing in this Agreement shall create a contractual relationship with, an obligation to, or a cause of action in favor of, any third party against Tallgrass.
- 14.9 The following Exhibits are incorporated in and made a part of this Agreement:
  - “A” Services
  - “B” Change Order Form
  - “C” Payment Schedule
  - “D” Performance Schedule
- 14.10 If a dispute shall arise between the parties, the prevailing party shall be reimbursed by the non-prevailing party for all reasonable expenses incurred in resolving such dispute, including reasonable attorney’s fees and out of pocket costs.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date of the last signature below.

CLIENT:

Signature: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_

\_\_\_\_\_  
 Date

TALLGRASS:

TALLGRASS LANDSCAPE ARCHITECTURE, LLC

By: \_\_\_\_\_  
 Its: \_\_\_\_\_

\_\_\_\_\_  
 Date

## EXHIBIT "A"

### SERVICES

**Proposed Services.** The Services to be provided under this Agreement are:

#### 1.1 Preliminary Project Scope

The Landscape Architect understands that the project is to provide a revised concept plan and cost estimate for improvements at Prospect Park, a portion of the South Rim Park Complex, along the Open Cut in Lead, SD.

A. The site is described in this image from the South Rim Parks Master Plan:



B. The design work includes:

- i. Rebuilding the gardens, stairs, walks, and walls in the park that are run down, and preparing the garden beds for plantings.
- ii. Considering future utility crossings.
- iii. Providing considerations for water / irrigation service.
- iv. A meeting, virtual or in person, with the beautification committee or representatives to hear about their ideas and understand their goals fully.

- v. A preliminary cost estimate for portions of the work that impact the initial project.
- C. The design work excludes:
  - i. A new survey.
  - ii. Specialty subconsultant, such as structural or electrical engineers.
  - iii. The Skywalk boardwalk.
  - iv. Improvements on Railroad Avenue.
  - v. Parking lot modifications.
- D. Other ideas that come from City Staff, Representatives, and the Beautification Committee will be incorporated into the work as best we can!

#### 1.2 **Site Analysis Phase**

In order to identify the physical attributes and limitations of the site relative to the Project Program, the Landscape Architect shall:

- A. Identify existing site conditions and features such as topography, drainage patterns, vegetation, including significant specimen plants, water elements, structures, views, and known off-site considerations relevant to the Project Program and as they pertain to the site.
- B. Confirm general location of available utilities as they pertain to the site.
- C. Analyze existing site conditions to identify physical attributes and limitations of the Project site as they pertain to the site.
- D. Review applicable governmental requirements, including zoning, ordinances, and permit requirements, known special restrictions, and zoning conditions as they pertain to the site.
- E. Advise the Client (Owner) of tests and surveys, such as soils analysis, topographic survey, utility survey, and/or property boundary survey, that may be required as they pertain to the site.
- F. Submit findings in the form of the following deliverables to the Client (Owner) (indicate items required):
  - i. letter or memo summarizing the findings, if requested
  - ii. plan view drawing summarizing the physical attributes and limitations, if requested
  - iii. summary description of needed tests and surveys, if requested

#### 1.3 **Schematic / Concept Design Phase**

Based on the Site Analysis Phase findings, the Landscape Architect shall explore design options and develop a schematic design through the following:

- A. Prepare studies and relational diagrams for the organization and placement of proposed program elements taking in consideration the existing site features, , and the requirements of other program elements directed by the Owner.
- B. Prepare drawings illustrating alternative design concepts for the form and configuration of the Program elements on the site (up to three alternatives shall be provided under the basic Scope of Services for this Agreement; additional alternatives requested by the Client (Owner) shall be considered Supplemental Services).
  - i. Basic cost assumptions shall be included in these concepts, but not full estimates.
  - ii. 3D representations and sketches shall only be made at the design team's discretion to illustrate specific components of the alternate concepts. Full visualizations will not be included at this stage.
  - iii. One primary concept is expected to be completed.
- C. Evaluate preliminary design concepts, present them to the Owner and, identify a preferred design concept.
- D. Based on the preferred design concept, prepare a scaled schematic design plan illustrating the form and configuration of the proposed improvements on the site.
- E. Prepare visualizations of the schematic design plan, which will include a 3D model of the proposed concept design and illustrate it providing a minimum of five views of the proposed improvements.
- F. Share a draft of the schematic design plan and visualizations.
- G. Preliminarily select key materials or material systems and prepare preliminary designs for key construction details.
- H. Prepare an opinion of probable costs to construct the proposed improvements, including a recommended contingency.
- I. Submit the plan, details, cost opinion, and other deliverables as appropriate comprising the Schematic Design submittal to the Client (Owner) for review and approval.
- J. Additional task that may be provided at this time will be:
  - i. Facilitating or taking part in strategic implementation meetings to discuss funding and phasing of the project.



- ii. Ongoing meetings with the owner to keep the design team up to date with owner decisions and to answer questions related to the Schematic / Concept Plans.

**Future Project Services.** Work that could follow this initial phase, but is not included in this proposal is as follows:

#### 1.4 Design Development Phase

Based on the Schematic Design approved by the Owner, the Landscape Architect shall refine and sufficiently detail the proposed form of the improvements to fully convey the design intent through the following:

- A. Revise and refine the Schematic Design plan to spatially define the location of the proposed improvements in relation to both the existing site features and the other proposed improvements.
- B. Prepare design detail sketches illustrating the proposed form, materials, color, and textures of the proposed improvements.
- C. Prepare supplemental drawings as required to illustrate the design intent:
  - i. Site Plan
  - ii. Detailed Area Plans (for play areas requiring more detail at this phase)
  - iii. Grading Plan
  - iv. Planting plan
  - v. Irrigation plan
  - vi. Site furnishings plan
  - vii. Other plans as determined necessary by the Landscape Architect.
- D. Prepare outline specifications for applicable areas of work.
- E. Submit the plans, preliminary details, and other deliverables as appropriate comprising the Design Development submittal to the Client (Owner) for review and approval

#### 1.5 Construction Document Phase

Based on the Owner-approved Design Development phase submission, the Landscape Architect shall prepare Construction Documents suitable for bidding or contract negotiations and for construction of the Project. The Landscape Architect shall:

- A. Prepare construction plans including:
  - i. Demolition plan
  - ii. Staking (or layout) plan
  - iii. Erosion Control Plan & Report
  - iv. Grading and drainage plan
  - v. Soil Conditioning Plan
  - vi. Irrigation plan
  - vii. Planting plan
  - viii. Furnishings plan

- ix. Lighting plan
  - x. Signage plan
  - xi. Others as necessary to adequately bid and construct the project.
- B. Prepare construction details to describe the materials, spatial relationships, connections, and finishes suitable for constructing the proposed improvements.
  - C. Coordinate the drawings and specifications prepared by the Landscape Architect's consultants, and when appropriate, other consultants requested by the owner. The extent and scope of these plans will be determined after Schematic Design is complete:
    - i. Grading Plans
    - ii. Drainage Plans
    - iii. Stormwater Plans
    - iv. Electrical Plans
      - 1. Lighting
      - 2. Electrical Service
    - v. Architectural Plans
    - vi. Specifications related to these plans
  - D. Prepare construction specifications for the proposed improvements.
  - E. Update the opinion of probable cost to construct the proposed improvements.
  - F. Prepare documents suitable for review for compliance with applicable governmental requirements and assist the Client (Owner) in the submission process to governmental agencies
    - i. Stormwater discharge permit from the South Dakota DENR
    - ii. Grading Permit
    - iii. Erosion Control Permit
    - iv. Other required permits
  - G. Address timely and applicable review comments received from agencies and revise the Construction Documents for compliance when required.
  - H. Submit final opinion of probable construction costs.
  - I. Submit (1) one copies of the Construction Documents in hardcopy format (digital copies will be submitted as required); additional copies shall be reimbursable costs as provided in the Agreement.

#### 1.6 Bidding Phase

When contracts are bid, the Landscape Architect shall assist the Client (Owner) during the bidding process to identify the Contractor to construct the Project and establish the firm price to accomplish the work. The Landscape Architect shall:

- A. Advertise the project locally to prospective bidders.
- B. Evaluate pre-bid qualification submissions (as required) and formulate recommendations.

- C. Conduct the pre-bid conference and document the proceedings.
- D. Clarify the Construction Documents as required through the preparation and issuance of addenda.
- E. Attend the bid opening.
- F. Review bids including alternates and formulate a recommendation on the award of the contract.

#### 1.7 **Construction Contract Administration Services**

The Landscape Architect shall provide the following administration services associated with the construction of the Project:

- A. take part in pre-construction conferences.
- B. Review and take appropriate action on materials and equipment submitted by the Contractor for approval.
- C. Review and take appropriate action on requests for information, shop drawings, and change order requests submitted for approval.
- D. Prepare Owner-initiated change orders as requested (may be supplemental service)
- E. Undertake periodic observation of the work in progress for conformance with Construction Documents. The frequency and duration of these visits will be determined prior to this work being contracted. We estimate weekly or biweekly visits may be required.
- F. Evaluate the completed work to determine acceptance or non-acceptance based on conformity with the design intent expressed in the Construction Documents
- G. Conduct observations to determine final completion and acceptance of the work.
- H. Review Contractor's marked-up as-built drawings.
- I. Attend a (1) year warranty walkthrough. Review and take appropriate action on materials and equipment submitted by the Contractor for approval.
- J. On behalf of the Owner, receive written guarantees, warranties, releases of liens, and related documents required from the Contractor.
- K. Determine consent of surety, if any, to issuance of final certificate of payment.

**Supplemental Services.** In addition to the above, Tallgrass agrees that when requested by Client, Tallgrass will perform the following supplemental services (the "Supplemental Services"), which shall entitle Tallgrass to additional compensation in addition to the Project Cost (the "Supplemental Costs"). The Supplemental Costs shall be mutually agreed to between Tallgrass

and Client before Tallgrass is obligated to perform the Supplemental Services. Supplemental Services under this Agreement expressly include, but are not limited to the following:

A. **Contract Negotiation Phase**

When or if contracts are negotiated, the Landscape Architect shall assist the Client (Owner) during the contract negotiation process to establish contract terms for the construction of the Project. The Landscape Architect shall:

- B. Meet with the selected Contractor to review the Construction Documents and the proposed improvements.
- C. Provide clarification to the Construction Documents as required.
- D. Review the selected Contractor's proposal and formulate a recommendation on the award of the contract.
- E. We understand that this phase may include the negotiation and inclusion of "in-kind" or donated materials or labor but won't be determined until funding sources are identified and a budget is set.

1. **Changes to Services.** Revisions to drawings or other documents shall constitute Supplemental Services when made necessary because of Client-requested changes to previously approved drawings or other documents, or because Client changes to previous Project budget parameters or Project requirements.

**EXHIBIT "B"**

**FORM OF CHANGE ORDER**

This Change Order # \_\_\_\_ pertains to that certain Standard Short Form Contract for Professional Services Between Landscape Architect and Client (the "Agreement") dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ entered into by and between the undersigned Client and Tallgrass Landscape Architecture, LLC. The parties hereto agree as follows:

1. Description of Change to Scope of Services. The scope of the Services shall be modified as follows:
  
  
  
  
  
  
  
  
  
  
2. Modification of the Project Cost. As a result of the change of the scope of Services identified in Section 1 above, the Project Cost shall be modified as follows:
  
  
  
  
  
  
  
  
  
  
3. No Other Modifications. Except as modified by this Change Order, the parties confirm and agree that the Agreement remains in effect on the terms contained therein.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CLIENT:**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**CONTRACTOR:**

TALLGRASS LANDSCAPE ARCHITECTURE, LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT "C"**

**Project Cost & Payment Schedule**

<b>Project Phase</b>	<b>Fee</b>	<b>Adjusted Fee</b>
Site Analysis / Schematic Design	\$7,500.00	\$2,500.00
Design Development	\$TBD	\$TBD
Construction Documents	\$TBD	\$TBD
Bidding	\$TBD	\$TBD
Construction Administration	TBD	\$TBD
<b>Total Tallgrass Fee</b>		<b>\$2,500.00</b>

Notes:

- A survey is not included in this fee
- A Civil, Electrical, or Structural Engineer is not included in this fee. If necessary to determine costs and considerations for this project the City should expect to amend this contract or contract separately with a consultant to advise aspects of this project that may require specialized work.

Tallgrass Landscape Architecture, LLC bills at the end of each month. Minor printing, local travel, and other offices expenses typically associated with a project like this are included. Our proposed fees are based upon our hourly rates which are as follows:

- Senior Landscape Architect \$140.00
- Landscape Architect \$110.00
- Landscape Architect in training \$80.00
- Architectural Designer \$80.00
- Subconsultants At cost

**EXHIBIT D**

**PERFORMANCE SCHEDULE**

Tallgrass shall begin providing Services on the Project promptly upon the receipt of a written notice to proceed and shall perform its Services in accordance with the following schedule:

<b>Project Phase</b>	<b>On Site</b>	<b>Complete on or by date in year 2025</b>
Site Analysis	Yes	February 28
Schematic Design	No	March 28

*Note: all dates listed here subject to adjustment by consent of owner and Landscape Architect.*