

# AGREEMENT BETWEEN CLIENT AND LANDSCAPE ARCHITECT

This Agreement, effective as of November 1, 2021, is between the following parties:

CLIENT: City of Waterloo

LANDSCAPE ARCHITECT: RITLAND+KUIPER Landscape Architects (RKLA)

for the following PROJECT: ***Gates Park Master Plan Update***

## ARTICLE 1: LANDSCAPE ARCHITECT'S BASIC AND ADDITIONAL SERVICES

### A. Project Understanding

The purpose of this master plan update is to explore potential improvements at Gates Park. Existing site features (parking, roads, ball fields, sport courts, shelters, etc.) will be analyzed for condition and relevance based upon the observations of Waterloo Leisure Services staff, elected city officials, and neighborhood stakeholders. Recommendations will begin by considering past Gates Park Master Plan concepts and will include, but not be limited to, the following issues:

1. Recommendations by the Client's current aquatic and programming consultants for the status and future of the existing swimming pool or potential for a splash pad development at Gates Park.
2. Alternative layouts for athletic fields as required
3. Potential reconfiguration or relocation of existing tennis and basketball facilities
4. Improvements to site circulation and accessibility
5. Potential picnic shelter locations
6. Options for development of an inclusive playground and splash pad in the park

End products to be provided will include a final master plan in a PDF format and grant level cost opinions.

### B. Scope of Services

#### 1. *Design Development Phase:*

- a. Attend a kickoff meeting with the Client to affirm the process, timeline, and identify the stakeholders to include in the planning process.
- b. Facilitate a group meeting with Client and invited stakeholders to identify each of their specific interests, ideas, and goals for the park and possible inclusive playground.
- c. Coordinate the following AECOM survey and design development tasks:
  - Topographic and utility survey of upper and lower Gates Park with enough detail to guide site design alternatives.
  - Evaluate utilities connections and terminations that may be needed for proposed improvements to Gates Park.
  - Assistance with site design, grading quantities, and preliminary cost opinions.
  - Coordination of lower Gates Park improvements with flood control systems previously designed by AECOM.
- d. Develop a preliminary conceptual master plan for Gates Park based upon information gathered.
- e. Facilitate a group meeting with stakeholders to discuss the preliminary conceptual master plan.
- f. Revise conceptual master plan based upon stakeholder input.
- g. Hold an open house where the public is invited to review the conceptual master plan.

- h. Facilitate a stakeholder meeting to review the input from the open house.
- i. Finalize the design development plan and preliminary cost opinion for the park. Final rendered plan and cost opinion will include sufficient detail for use with public review, grant submittals, and fundraising efforts for proposed improvements. Final deliverables will include up to four perspective drawings or image edits that will show before and after impacts of proposed improvements.

### **C. Services Not Included**

The following tasks are specifically excluded from this scope but can be provided for an additional fee:

1. Specialty Features (final design of spray pad features, individual play structures within the playground, shelter structures, public art features, etc.).
2. Civil, mechanical, or electrical engineering (water supply, sanitary sewer, storm sewer, electrical supply, communications, lighting).
3. 3D modeling of the park improvements.
4. Printing and reproduction costs – deliverables will include digital PDF files provided to the Client. Any desired printing of reports, plans, or presentation graphic boards will be billed to the Client at our direct cost.
5. Construction Documents and Construction Related Services – these services would be added by amendment to this contract after the scope of the project is more clearly defined.

### **D. Additional Services**

1. We will identify services not included in our proposed scope of work if they are requested. We will advise your office of the impact on our work, and propose an increase to the fee amount before any work is undertaken that is outside our scope of services.
2. Extra services will be provided on an hourly basis at the billing rates listed below or the current hourly rates prevailing when services are rendered.

## **ARTICLE 2: TERMINATION**

- A. Either Client or Landscape Architect may terminate this Agreement upon seven days written notice.
- B. If terminated, Client agrees to pay Landscape Architect for all Basic and Additional Services rendered and Reimbursable Expenses incurred up to the date of termination.
- C. Upon not less than seven days' written notice, Landscape Architect may suspend the performance of its services if Client fails to pay Landscape Architect in full for services rendered or expenses incurred. Landscape Architect shall have no liability because of such suspension of services or termination due to Client's nonpayment.

## **ARTICLE 3: DISPUTE RESOLUTION**

- A. Client and Landscape Architect agree to mediate claims or disputes arising out of or relating to this Agreement before initiating litigation. The mediation shall be conducted by a mediation service acceptable to the parties. 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.

#### **ARTICLE 4: USE AND OWNERSHIP OF LANDSCAPE ARCHITECT'S DOCUMENTS**

- A. Upon the parties signing this Agreement, Landscape Architect grants Client a nonexclusive license to use Landscape Architect's documents as described in this Agreement, provided Client performs in accordance with the terms of this Agreement. No other license is implied or granted under this Agreement. All instruments of professional service prepared by Landscape Architect, including but not limited to, drawings and specifications, are the property of Landscape Architect. These documents shall not be reused on other projects without Landscape Architect's written permission. Landscape Architect retains all rights, including copyrights, in its documents. Client or others cannot use Landscape Architect's documents to complete this Project with others unless Landscape Architect is found to have materially breached this Agreement.

#### **ARTICLE 5: MISCELLANEOUS PROVISIONS**

- A. This Agreement is governed by the law of Landscape Architect's principal place of business.
- B. This Agreement is the entire and integrated agreement between Client and Landscape Architect and supersedes all prior negotiations, statements or agreements, either written or oral. The parties may amend this Agreement only by a written instrument signed by both Client and Landscape Architect.
- C. In the event that any term or provision of this Agreement is found to be unenforceable or invalid for any reason, the remainder of this Agreement shall continue in full force and effect, and the parties agree that any unenforceable or invalid term or provision shall be amended to the minimum extent required to make such term or provision enforceable and valid.
- D. Neither Client nor Landscape Architect shall assign this Agreement without the written consent of the other.
- E. Irrespective of any other term in this Agreement, Landscape Architect shall not control or be responsible for construction means, methods, techniques, schedules, sequences or procedures; or for construction safety or any other related programs; or for another parties' errors or omissions or for another parties' failure to complete their work or services in accordance with Landscape Architect's documents.
- F. To the greatest extent permitted by Iowa law, the Client agrees to indemnify, defend and hold Landscape Architect harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to, reasonable attorneys' fees and all legal expenses and fees incurred through appeal, and all interest thereon, accruing or resulting to any and all persons, firms or any other legal entities on account of any damages or losses to property or persons, including injuries or death, or economic losses, arising out of the Project and/or this Agreement, except that the Landscape Architect shall not be entitled to be indemnified to the extent such damages or losses are found by a court or forum of competent jurisdiction to be caused by Landscape Architect's negligent errors or omissions.
- G. Should any legal proceeding be commenced between the parties to this Agreement seeking to enforce any of its provisions, including, but not limited to, fee provisions, the prevailing party in such proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorneys' and expert witnesses' fees, which shall be determined by the court or forum in such a proceeding or in a separate action brought for that purpose. For purposes of this provision, "prevailing party" shall include a party that dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.
- H. Client and Landscape Architect waive consequential damages for any claims, disputes or other matters in question arising out of or relating to this Agreement. Landscape Architect's waiver of consequential damages, however, is contingent upon the Client requiring contractor and its subcontractors to waive all consequential damages against Landscape Architect for claims, disputes or other matters in question arising out of or relating to the Project.

- I. To the extent damages are covered by property insurance during construction, Client and Landscape Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for such damages. Client or 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 described in this paragraph.
- J. Client acknowledges and agrees that proper Project maintenance is required after the Project is complete. A lack of or improper maintenance may result in damage to property or persons. Client further acknowledges and agrees that, as between the parties to this Agreement, Client is solely responsible for the results of any lack of or improper maintenance.

**ARTICLE 6: COMPENSATION AND PAYMENTS**

A. Based on the amount of services anticipated, RITLAND+KUIPER Landscape Architects (and their subconsultant, AECOM) will provide the services described in Article 1, and in accordance with the conditions outlined in this contract, for a sum not to exceed \$ 52,700.

RITLAND+KUIPER Landscape Architects	\$ 24,700
AECOM (includes surveying)	\$ 28,000

- 1. Billing for services will be hourly, at the rates listed below, and submitted monthly as the work progresses.
- 2. Landscape Architect shall bill Client for Basic and Additional Services (if requested and agreed to) monthly as the work progresses. All payments are due Landscape Architect upon receipt of invoice.
- 3. Billing rates effective through May, 2022:
 

Craig Ritland, FASLA, Principal	\$125.00/hr.
Mark Kuiper, ASLA, Principal	\$125.00/hr.
Samantha Price, Associate, ASLA	\$75.00/hr.

---

**SUBMITTED BY:**

**AGREED TO:**

LANDSCAPE ARCHITECT

CLIENT: CITY OF WATERLOO



Mark Kuiper, ASLA, LEED AP, Principal  
 Signature Dated: November 1, 2021  
 License/Certificate No. IOWA 00413  
 Renewal Date: June 30, 2023

\_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_