

December 4, 2017
Revised December 5, 2017

Brandon Bennett
Noblesville Parks & Recreation
701 Cicero Road
Noblesville, IN 46060



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RE: Letter of Agreement – Landscape Architecture Services
Seminary Park

Dear Brandon,

Thank you for the opportunity to submit this Letter of Agreement between Noblesville Parks & Recreation (Client) and Mader Design LLC (Landscape Architect) to provide Landscape Architecture services for the Design for the Seminary Park in Noblesville, Indiana (Project). The information contained herein is based on our discussions and our proposal document dated September 15, 2017.

Scope of Services

We understand you have a strong concept in place for the development of the park with buy in from the public and elected officials. Our job is to work with you to evolve and enhance the design considering constructability, budget, and an evolving understanding of park functions and program opportunities, all while staying true to the established concept. The concept/schematic phase will determine the scope, direction, and potential phasing for the project and which will affect the future budget and associated fees.

Based on our park visit and conversations to date, we understand your goals and anticipated park improvements to include the following: These lists may be confirmed, edited, amended, or changed as the design process evolves.

Goals

- Placemaking
- Connect the history of the site to the present
- Create an identifiable gateway
- Accessibility
- Lighting for security and aesthetics through the park
- Create secondary paths through the park
- Enhance park focal point
- Create a unique garden space
- Maintain open play space

Anticipated Park Improvements

- Gateway with historic feel
- Ornamental fencing at 2 corners of the park
- Additional playground piece (maintain existing structure in place)
 - Create accessible walk to playground
 - Update surrounding amenities such as water fountain and benches
- Replace main walk for accessibility and longevity
- Create central node as gathering space and amphitheater area
- Improve gazebo
 - Option to replace with larger shelter/bandshell as focal point
- Enhanced seating throughout the park
- Add trees and plantings

- Develop sensory garden and pollinator garden
- Upgrade and add historic light fixtures with opportunity to string decorative Edison Bulb decorative lights along pathways
- Enhance the topography throughout the park
- Provide interpretive signage of the history of the site
- Locate new park amenities such as bike racks, pet stations, picnic tables

Based on our conversations to date, we understand the original budget estimate was approximately \$180,000-\$200,000, but you feel the budget may need to be closer to \$280,000-\$300,000. There also may be opportunities for donations, in-kind work, and partnerships that could decrease the City's expenditures or allow for a larger project to fit within your budget. In our Proposal, we completed a very rough budget range (and we always budget high early in projects) based on our discussions and potential evolutions of the design concept presented. In our opinion, the budget could vary widely depending on design choices that are made, needs or desires to make significant improvements such as the gazebo vs. bandshell, how much of an addition to the playground is desired, and level of detail for the garden design. We can work with you to provide high quality park improvements. I believe you can achieve a very nice project with a construction budget of \$250,000. As our budget in our proposal showed, you could spend \$700,000 if there is a desire and appetite to do so. As with most projects and clients, I am sure we're somewhere in between, and likely in the lower third of the range being discussed. If there is an opportunity to increase the impact through an increased budget, donations, in-kind services, or combination thereof, it only enhances the quantity and/or quality of potential amenities or design.

Concept Development/Schematic Design

We will begin with a brief Concept Development/Schematic Design phase to verify the concept, goals, and anticipated park enhancements while clarifying and balancing the available and required budget and consider potential needs to phase implementation. This phase will include 2-3 meetings with you, and include participation from Samantha and possibly even representatives of the community. We feel this is an important step to verify and confirm the scope, viability, and appetite for the collaboratively developed and agreed upon design. This also allows us to adjust and confirm our Fee to ensure it is equitable for the project, as well as engage additional subconsultants as needed. We may also add a Civil Engineer and Structural Engineer if required, with most of their services being included in the overall Project Fee. There is potential to add an electrical engineer to the team as a Reimbursable Additional Service, or bid that scope of work as Design/Build.

Construction Documents

Once the design and remaining project Fee is confirmed, we would move right into detailed design and construction documents. With a solid design in place from the above phase, the detailed design work would move quickly and seamlessly into construction documents. We would meet with you 4-6 times during this phase, and provide numerous opportunities for your review, input, and confirmation of the project direction. This phase would end with your approval of final Construction Documents which would include plans (site layout, grading/erosion control, planting, enlarged plans, and details along with potential plans for electrical work if needed). Written technical specifications would be prepared and combined with your standard contract and 'front end' documents as a Project Manual.

Given the understood scope, we believe there would be minimal regulatory approvals, but would confirm any required review/approval processes at the completion of the initial Concept Development Phase. If required we would coordinate with local agencies to gain the necessary approvals, which could include Drainage Review, Site Plan Review, Rule 5/SWPPP Plan Review, and potentially others. This is the only Civil Engineering Service that would be considered Additional Services. We would anticipate any new Bandshell/Shelter structures would be completed by a manufacturer that would include foundation engineering and local and state building reviews/approvals/permitting bid out in a Design/Build process with design criteria being developed by our design team.

Bidding & Construction Administration

Concurrently, we would put construction documents out to bid through your preferred plan room/reproduction service. We would conduct a pre-bid meeting, answer bidder questions, and issue addenda as necessary. We would assist you in receiving and evaluating bids as you select the most responsive and responsible bidder for the project.

During construction, we would facilitate regular construction meetings and site visits. We would review and approve shop

drawings and submittals, and work closely with the Contractor to answer questions and make adjustments as needed during the construction phase. We will work with you to review payment applications. We will complete site observation reports throughout the project and upon completion of construction activities, assisting you with confirming substantial completion and final completion of the project.

Assumptions

1. Project scope is based upon your pre-design work completed to date.
2. Information provided by Client is complete and accurate and assumed to be true for the purposes of the Project. Client shall be available to answer questions and provide design input throughout the Project process.
3. Drawings shall be provided digital PDF formats. Large format printing shall be a reimbursable expense.
4. Base drawings shall be developed from Survey in AutoCAD format provided by Owner or solicited as a Reimbursable Expense.
5. Utility design is limited to on-site lateral connections and a viable drainage outlet is available for the site and that off-site drainage improvements will not be required. Off-site utility and storm main extensions are not anticipated and the design and permitting of such are not included in the scope and fee herein.
6. Contractor shall obtain all required permits for the project.
7. Landscape Architect shall not be responsible for determining if any areas on site are environmentally sensitive (i.e. underground tanks, asbestos materials, etc...) or may require special environmental permitting.
8. We estimate that the area of land disturbance for this project will not exceed 1 acre. Therefore, the project will not be subject to IDEM Rule 5 Erosion Control Permitting and requirements for post-construction stormwater treatment.
9. Based upon pre-design concept plan, we have assumed that stormwater detention will not be required by code. Detailed drainage, detention, or water quality facility design is beyond the anticipated scope work and shall be considered Additional Services.
10. Fees for Regulatory Approvals shall be paid directly by Owner or Client, and are not included in reimbursables budgets.
11. The following services are not included in the Scope of Work and Fee for Basic Services, but can be provided as Additional Services:
 - a Zoning approvals, variances, replatting, or rezoning efforts.
 - b Detailed Color renderings for marketing or fundraising purposes beyond Design Development Site Plan, or as determined by Landscape Architect.
 - c Land Surveying service, prepare legal descriptions for ROW or easement dedication, parcel consolidation, platting services, preparation of off-site easements.
 - d Obtaining Improvement Location and/or Building Permits (acquired by Contractor or Owner's Representative).
 - e Irrigation design, electrical engineering, design of off-site improvements.

Schedule

We will work with you to establish a mutually agreeable project schedule.

Compensation

Proposed Fees are separated into the initial Concept Design/Schematic Design phase and the Detailed Design/Construction Documents phase in order to allow the design scope to be confirmed before confirming and finalizing the full Professional Fees for the project.

The Concept Design/Schematic Design phase is a lump sum fee of \$7,500 plus reimbursable expenses.

Once Complete, fees for Detailed Design/Construction Documents, Bidding, and Construction Phase services would be determined based on a 9.5% of the Construction Budget for all aspects of the project intended to be implemented, less the \$7,500 fee from the initial phase. This fee would include base Civil and Structural Engineering Services if required. The remaining scope and fees could be executed as an addendum to this Agreement, or a new Agreement can be developed.

A reasonable proposal for a \$300,000 project would be a lump sum fee of \$28,500 plus reimbursable expenses. With \$7,500 already spent for the initial phase, the remaining fee would be \$21,000.

We understand you have great partners in the community and can often leverage your budget to achieve greater value for your dollars spent. So as a caveat, if design work includes elements of the park that could be provided as a donation, partnership, or 'free' element such as a new Bandshell, boulder benches, or garden plantings, the fee would be based on the true construction value of the designed elements. For example, if the true value of the construction is \$400,000, but dollars spent would only be \$250,000 because of partnerships or in-kind services, the Professional Fees would be based on the \$400,000 value. If the project is phased, design fees for future phases of implementation would be determined at that time.

1. A survey will be required to complete the project, and the sooner it is started, the better. Additional Subconsultants for regulatory approvals, electrical engineering, or other specialty consultants may be required once the project scope is determined in the Schematic Design phase. These will be invoiced directly to the Owner or submitted as reimbursable expenses to the project.
 - a. Site Survey - budget \$5,000-\$7,000
 - b. Regulatory Approvals - anticipate \$2,500-\$5,000 depending services needed
 - c. Electrical Engineering - anticipating \$3,500-\$6,000 depending on level of service needed.
2. Reimbursable expenses shall be per the attached 'Mader Design LLC - Terms & Conditions', with a budget of \$500-\$750.
3. Additional Services are services not described as part of the above Scope. Services such as, but not limited to, additional meetings, additional design work, detailed cost estimating, color renderings and fundraising materials beyond those described above, can be provided on an hourly basis at rates listed in the attached 'Mader Design LLC - Terms & Conditions' or negotiated lump sum fee upon written agreement between Owner and Landscape Architect. Compensation shall exceed the above maximum only with prior written consent of the Client.

Please keep one copy of this Letter of Agreement for your records, and return one signed copy to our office. We will begin work on the project upon receipt of this executed Agreement or written Notice to Proceed.

Mader Design LLC appreciates the opportunity to be of service for this exciting project. Please let me know if you have any further questions.

Sincerely,
Mader Design LLC



Jeffrey R. Mader, ASLA, LEED AP
Principal/Owner

Accepted by:



Print:
Noblesville Board of Works

12-19-2017
Date

Mader Design LLC - Terms & Conditions of Professional Services

STANDARD TERMS AND CONDITIONS form an integral part of the Agreement for Design and Construction Documents for the Project as provided by Mader Design.

1. ACCESS TO THE SITE: Unless otherwise stated, Mader Design LLC (Landscape Architect) will have access to the site for activities necessary for the performance of the services. The Landscape Architect will take precautions to minimize damage from these activities, but has not included in the project fee the cost of restoration of any resulting damage. The Landscape Architect has not been retained or compensated to provide design and construction observation services related to the Contractor's safety precautions or means, methods, techniques, sequences or procedures for the Contractor to perform his work. The Client understands that the Landscape Architect is not responsible, in any way, for the means, methods, techniques, sequences, procedures or scheduling of construction, for job site safety, and will not be responsible for any losses or injuries that occur at the project site.

2. INSURANCE: The Landscape Architect shall secure and endeavor to maintain such insurance as will protect the Client from claims of negligence, bodily injury, death, or property damage that may arise out of the performance of the Landscape Architect's services in the Construction Document portion of the Work.

3. RISK ALLOCATION: In recognition of the relative risks, rewards and benefits of the Project to both the Client and the Landscape Architect, the risks have been allocated such that the Client agrees that, to the fullest extent permitted by law, the Landscape Architect's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claim expenses, including attorney's fees, arising out of this Agreement, from any cause or causes, shall not exceed the total amount of the Landscape Architect's fee for any claim arising out of the Landscape Architect's negligence in preparing Construction Documents.

4. TERMINATION OF SERVICES: This Agreement may be terminated by the Client or by the Landscape Architect upon not less than seven days written notice should the other party fail to substantially perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. If this Agreement is terminated by the Client, the Landscape Architect shall be paid for services performed to the termination notice date, including reimbursable expenses due plus termination expenses. Termination expenses are defined as reimbursable expenses directly attributable to termination, plus 15% of the total compensation earned to the time of termination to account for the Landscape Architect's rescheduling adjustments, reassignment of personnel and related costs incurred due to termination.

5. REIMBURSABLE EXPENSES: Reimbursable expenses shall be limited to the following: (a) expenses of printing, reproduction, postage and handling of drawings and specifications. (b) mileage expenses at the current U.S. IRS allowance. (c) costs incurred by submitting for regulatory approvals from applicable jurisdictions. (d) long-distance phone expenses. (e) overnight and express mail and courier fees. All reimbursable expenses shall be billed at 1.10 the actual cost incurred by the Landscape Architect for administration of such items.

6. DISPUTE RESOLUTION: All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement, or breach thereof, shall be presented to non-binding mediation, subject to the parties agreeing on a mediator.

7. OWNERSHIP OF DOCUMENTS: It is understood by and between the parties to this Agreement that all Drawings, Specifications and other work or products of the Landscape Architect for this Project shall remain the property of the Landscape Architect and are instruments of service for this Project only and shall apply to this particular Project only. Any reuse of the instruments of service of the Landscape Architect by the Client for any extensions of the Project or for any other project without the written permission of the Landscape Architect shall be at the Client's sole risk, and the Client agrees to defend, indemnify and hold harmless the Landscape Architect from any claims, damages or expenses, including attorneys fees, arising out of unauthorized reuse of the Landscape Architect's instruments of service by the Client or by others acting through or on behalf of the Client. Any reuse or adaptation of the Landscape Architect's

instruments of service on other projects shall entitle the Landscape Architect to additional compensation in an amount to be agreed upon by the Client and the Landscape Architect.

8. APPLICABLE LAW: Unless otherwise specified within this Agreement, this Agreement shall be governed by the law of the State of Indiana. In the event any provisions of this Agreement shall be held to be invalid or unenforceable, the remaining provisions shall be valid and binding on both parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

9. PAYMENT TO THE LANDSCAPE ARCHITECT: Fees for services shall be as provided in this Agreement. Progress payments shall be made in proportion to services rendered and as indicated within this Agreement and shall be due and owing within thirty days of Landscape Architect's submittal of monthly invoice. Past due amounts include a charge of 1-1/2% per month for interest from the thirtieth day. Client shall reimburse all of Landscape Architect's cost and expense (including reasonable attorneys' fees) incurred in connection with collecting any past due amount owed under this agreement. If the Client fails to make monthly payments due the Landscape Architect, the Landscape Architect may, after giving seven days written notice to the Client, suspend services under this Agreement and retain all work products deliverable to the Client until full payment. The project completion date shall be automatically extended by the number of days services are suspended. No deductions shall be made from the Landscape Architect's compensation on account of penalty, liquidated damages or other sums withheld from payment(s) to Contractors or based on Contractors performance.

10. EXTENT OF AGREEMENT: This Agreement with attached Terms represents the entire understanding between the Owner and the Landscape Architect and supersedes all prior negotiations, representations, or agreements, whether written or oral. This Agreement may be amended only in writing signed by both the Client and the Landscape Architect.

11. OPINION OF CONSTRUCTION COSTS: Any opinion of construction cost prepared by the Landscape Architect represents his judgment as a design professional and is supplied for the general guidance of the Client. Since the Landscape Architect has no control over the cost of labor and material, or over competitive bidding or market conditions, the Landscape Architect does not guarantee the accuracy of such opinions as compared to Contractor bids or actual cost to the Client.

12. CHANGES IN SCOPE OF SERVICES: In the event the scope of work as described in this Agreement changes to a degree that will alter the fee, the Client shall be notified in writing and a revised fee will be documented and a completion time and compensation amount will be submitted for approval. For services not included in this Agreement, Additional Compensation shall be computed using the following hourly rate of \$150 for Principal Landscape Architect, \$110 for Landscape Architect, \$90 for Graduate Landscape Architect, and \$70 for Administrator or Intern. Rates indicated are in effect through December 31, 2017, after which time they will increase in relationship to salary increases.

13. EXISTING OR HIDDEN CONDITIONS: A condition is hidden if it is concealed by existing finishes or features or if it cannot be investigated by reasonable visual observation. If the Landscape Architect has reason to believe that such a condition may exist, the Landscape Architect will notify the Client, who shall then authorize and pay for all costs associated with the investigation of such condition and, if necessary, all costs necessary to correct said condition.

14. CONSTRUCTION PHASE SERVICES: Should the Client authorize construction installation based on the plans provided under this Agreement without project observation or review of Contractor's performance or any construction phase services by the Landscape Architect, the Client assumes all responsibility for interpretation of these documents and for construction observation and/or supervision and waives any claims against the Landscape Architect that may be in any way connected thereto.