

DATE: June 28, 2021

MEMO TO: Terry Wilke, Chair
Planning Committee

FROM: Randall L. Seebach
Director of Planning and Land Preservation

RECOMMENDATION: Recommend approval of a Resolution awarding a Contract for Phase II Architectural Services for the Environmental Education Facility at Edward L. Ryerson Conservation Area to Lake Flato Architects, San Antonio, Texas, in the Contract Price of \$573,725.00.

STRATEGIC DIRECTIONS SUPPORTED: Public Access and Connections, Leadership, Conservation, Organizational Sustainability, Communication, Education and Outreach.

FINANCIAL DATA: The Environmental Education Facility project was approved as part of the amended FY2021 Budget and FY2021 Capital Improvement Plan in the amount of \$5,178,000.00. The actual cost of \$573,725.00 will be charged to account 20104100-803200-61410.

BACKGROUND: Through private funding, secured through the Preservation Foundation of the Lake County Forest Preserves, the Lake County Forest Preserve District (District) was able to engage Lake Flato Architects to design a site plan and schematic design for the new environmental education facility at the Edward L. Ryerson Conservation Area. This facility would replace and expand the education programming currently being offered at two existing log cabins which have reached the end of their useable life and do not comply with current accessibility codes. The proposed new facility would be built as a net-zero energy building and the District will seek funding assistance for the construction from the Net Zero Energy Building Program offered by the Illinois Clean Energy Community Foundation (ICECF).

In order to prepare the project for construction and for the ICECF funding, the District requires a qualified architectural firm to provide design development, contract documentation and grant submittal services for the project. The architectural services contract that would be approved by the attached resolution will include the design of a 5,789 SF education facility (including four classrooms, restrooms, storage areas, virtual teaching space and a screened porch); mechanical, plumbing and electrical design; civil engineering (road, bus parking and walkway design); water and septic system design; and interpretive exhibit design. Due to budget constraints, it is anticipated that the complete education facility will be constructed in two phases with the north portion of the education facility (3,015 SF), screened porch, road realignment, walkways and education loop trail completed in Phase I. Construction of Phase I is anticipated to begin in the spring 2022 with an estimated spring 2023 opening.

REVIEW BY OTHERS: Chief Operations Officer, Director of Finance, Purchasing Manager, Corporate Counsel.

**LAKE COUNTY FOREST PRESERVE DISTRICT
LAKE COUNTY, ILLINOIS**

**A RESOLUTION AWARDING A CONTRACT FOR PHASE II ARCHITECTURAL SERVICES
FOR THE ENVIRONMENTAL EDUCATION FACILITY AT EDWARD L. RYERSON
CONSERVATION AREA TO LAKE FLATO ARCHITECTS**

WHEREAS, the Lake County Forest Preserve District (the “District”) desires to retain a firm to perform phase II architectural services for the Environmental Education Facility at Edward L. Ryerson Conservation Area (the “Services”); and

WHEREAS, the Director of Planning and Land Preservation the Purchasing Manager have determined that the Services require personal confidence; and

WHEREAS, the Purchasing Manager has solicited a proposal for the Services; and

WHEREAS, the District staff, the Purchasing Manager, the Director of Planning and Land Preservation, and the Planning Committee have reviewed the proposal and recommend that the Board of Commissioners (i) find that Lake Flato Architects is the highest qualified Firm to provide the Services, (ii) find that the proposal for the Services submitted by Lake Flato Architects is the proposal that is most advantageous to the District, and (iii) award a contract for the Services to Lake Flato Architects in substantially the form attached hereto (the “Contract”) in an amount not to exceed \$573,725.00 (the “Contract Price”); and

WHEREAS, the Board of Commissioners hereby finds that Lake Flato Architects is the highest qualified Firm to provide the Services, that the proposal for the Services submitted by Lake Flato Architects is the proposal that is most advantageous to the District and that the Contract Price is fair and reasonable;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Lake County Forest Preserve District, Lake County, Illinois **THAT:**

Section 1: Recitals. The recitals set forth above are incorporated as a part of this Resolution by this reference.

Section 2: Award of Contract. The Contract in amount of the Contract Price, in substantially the form attached hereto, is hereby awarded to Lake Flato Architects.

Section 3: Execution of Contract. The Executive Director of the District is hereby authorized and directed to execute the Contract for the Services in the amount of the Contract Price.

Section 4: Payments. The District Treasurer shall make payments under the Contract only pursuant to and in accordance with the Contract terms.

Section 5: Effective Date. This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED this ____ day of _____, 2021

AYES:

NAYS:

APPROVED this ____ day of _____, 2021

Angelo D. Kyle, President
Lake County Forest Preserve District

ATTEST:

Julie Gragnani, Secretary
Lake County Forest Preserve District

Exhibit No. _____



CONTRACT BETWEEN

LAKE COUNTY FOREST PRESERVE DISTRICT
AND
LAKE FLATO ARCHITECTS
FOR
PHASE II ARCHITECTURAL SERVICES
FOR THE
ENVIRONMENTAL EDUCATION FACILITY

EDWARD L. RYERSON CONSERVATION AREA
61410-197-985

TABLE OF CONTENTS

| | |
|---|---|
| ARTICLE I - THE SERVICES | 1 |
| 1.1 Performance of the Services | 1 |
| 1.2 Commencement and Completion Dates..... | 1 |
| 1.3 Required Submittals | 2 |
| 1.4 Review and Incorporation of Contract Provisions..... | 2 |
| 1.5 Financial and Technical Ability to Perform | 2 |
| 1.6 Time..... | 2 |
| 1.7 Consultant's Personnel and Sub-Consultants | 2 |
| 1.8 Owner's Responsibilities | 3 |
| 1.9 Owner's Right to Terminate or Suspend Services for Convenience..... | 3 |
| ARTICLE II - CHANGES AND DELAYS | 4 |
| 2.1 Changes | 4 |
| 2.2 Delays..... | 4 |
| 2.3 No Constructive Change Orders | 4 |
| ARTICLE III - CONSULTANT'S RESPONSIBILITY FOR DEFECTIVE SERVICES..... | 5 |
| 3.1 Representation of Compliance | 5 |
| 3.2 Corrections | 5 |
| 3.3 Risk of Loss | 5 |
| ARTICLE IV - INSURANCE; INDEMNIFICATION | 5 |
| 4.1 Insurance..... | 5 |
| 4.2 Indemnification | 6 |
| ARTICLE V - PAYMENT | 6 |
| 5.1 Contract Price..... | 6 |
| 5.2 Taxes, Benefits and Royalties | 6 |
| 5.3 Progress Payments | 6 |
| 5.4 Final Acceptance and Final Payment..... | 7 |
| 5.5 Deductions..... | 7 |
| 5.6 Accounting..... | 7 |

ARTICLE VI - REMEDIES 8

6.1 Owner’s Remedies 8

6.2 Terminations and Suspensions by Owner Deemed for Convenience 8

ARTICLE VII - LEGAL RELATIONSHIPS AND REQUIREMENTS 8

7.1 Binding Effect 8

7.2 Relationship of the Parties 9

7.3 No Collusion 9

7.4 Assignment 9

7.5 Confidential Information 9

7.6 No Waiver 10

7.7 No Third Party Beneficiaries 10

7.8 Notices 10

7.9 Governing Laws 11

7.10 Changes in Laws 11

7.11 Compliance with Laws and Grants 11

7.12 Ownership of Documents 11

7.13 Time 11

7.14 Severability 11

7.15 Entire Agreement 12

7.16 Amendments 12

ATTACHMENT A – SUPPLEMENTAL SCHEDULE OF CONTRACT TERMS

ATTACHMENT B – CONSULTANT'S SCOPE OF WORK

ATTACHMENT C – KEY PERSONNEL

**CONTRACT BETWEEN
LAKE COUNTY FOREST PRESERVE DISTRICT
AND
LAKE FLATO ARCHITECTS
FOR
PHASE II ARCHITECTURAL SERVICES FOR THE
ENVIRONMENTAL EDUCATIONAL FACILITY
EDWARD L. RYERSON CONSERVATION AREA**

In consideration of the agreements set forth below, the Lake County Forest Preserve District, a body corporate and politic and unit of local government organized and existing under the Downstate Forest Preserve District Act, 70 ILCS 805/001 et seq., 1899 West Winchester Road, Libertyville, Illinois 60048, ("Owner") and Lake Flato Architects, a(n) Texas Corporation, 311 Third Street, San Antonio, Texas 78205, ("Consultant") make this Contract as of July 14, 2021 and hereby agree as follows:

ARTICLE I - THE SERVICES

1.1 Performance of the Services

Consultant shall, at its sole cost and expense, provide, perform, and complete all of the following professional phase II architectural services, all of which is referred to in this Agreement as the "Services":

- A. Professional Services. Provide, perform, and complete, in the manner described and specified in this Contract, all professional services necessary to accomplish the "Project," as defined in Attachment A, in accordance with the Scope of Services attached hereto as Attachment B.
- B. Approvals. Procure and furnish all approvals and authorizations specified in Attachment A.
- C. Insurance. Procure and furnish all required certificates and policies of insurance specified in Attachment A.
- D. Standard of Performance. Provide, perform, and complete all of the foregoing in full compliance with this Contract, in a professional manner, and in accordance with the standards of professional practice, care, and diligence in existence at the time of performance of the Services applicable to recognized and qualified consulting firms in the Chicago Metropolitan Area (the "Standard of Performance").

1.2 Commencement and Completion Dates

Consultant shall commence the Services not later than the "Commencement Date" set forth in Attachment A, and shall, within the confines of the Standard of Performance, diligently and continuously prosecute and carry out the Services at such a rate as will allow the Services to be fully provided, performed and completed in full compliance with this Contract not later than the "Completion Date" or, if the Services are to be performed in separate phases, the "Completion Dates," set forth in Attachment A. The time of commencement, rate of progress, and time of completion are referred to in this Contract as the "Contract Time."

1.3 Required Submittals

A. Submittals Required. Consultant shall submit to Owner all reports, documents, data, and information required to be submitted by Consultant under this Contract (“Required Submittals”).

B. Time of Submission and Owner’s Review. All Required Submittals shall be provided to Owner no later than the time, if any, specified in Attachment A, or otherwise in this Contract. If no time for submission is specified for any Required Submittal, then that Submittal shall be submitted within a reasonable time in light of its purpose and, in all events, in sufficient time, in Owner’s opinion, to permit Owner to review that Submittal same prior to the commencement of any part of the Services to which that Submittal may relate. Owner shall have the right to require such corrections as may be necessary to make any Required Submittal conform to this Contract. No Services related to any Required Submittal shall be performed by Consultant until Owner has completed review of such Required Submittal with no exception noted. Owner’s review and approval of any Required Submittal shall not relieve Consultant of the entire responsibility for the performance of the Services in full compliance with, and as required by or pursuant to this Contract, and shall not be regarded as any assumption of risk or liability by Owner. The Consultant shall not be held liable for claims of delay caused by the Owner’s failure to timely review and approve any Required Submittal.

C. Responsibility for Delay. Consultant shall be responsible for any delay in the Services resulting from Consultant’s, or its Sub-consultant’s, delay in providing Required Submittals conforming to this Contract.

1.4 Review and Incorporation of Contract Provisions

Consultant represents and declares that it has carefully reviewed, and fully understands, this Contract, including all of its Attachments, all of which are by this reference incorporated into and made a part of this Contract.

1.5 Financial and Technical Ability to Perform

Consultant represents and declares that it is financially solvent, and has the financial resources necessary, and has sufficient experience and competence, and has the necessary capital, facilities, organization, and staff necessary to provide, perform, and complete the Services in full compliance with, and as required by or pursuant to, this Contract.

1.6 Time

Within the professional obligations established by the Standard for Performance, Consultant represents and declares that the Contract Time is sufficient time to permit completion of the Services in full compliance with, and as required by or pursuant to, this Contract for the Contract Price.

1.7 Consultant’s Personnel and Sub-Consultants

A. Consultant’s Personnel. Consultant shall provide all personnel necessary to complete the Services, including without limitation, the “Key Project Personnel” identified in Attachment C. Consultant shall provide to Owner telephone numbers at which the Key Personnel can be reached on a 24-hour basis. Consultant and Owner may, by mutual agreement, make changes and additions to the designations of Key Project Personnel. Consultant shall have no claim for a Change Order, for compensation in excess of the Contract Price, or for a delay or extension of the Contract Time as a result of any such termination, reassignment, resignation, or substitution of Key Project Personnel.

B. Approval and Use of Sub-Consultants. Consultant shall perform the Services with its own personnel and under the management, supervision, and control of its own organization unless otherwise approved by Owner in writing. All sub-consultants and subcontracts used by Consultant shall be acceptable to, and approved in advance by, Owner. Owner's approval of any sub-consultant or subcontract shall not relieve Consultant of full responsibility and liability for the provision, performance, and completion of the Services in full compliance with, and as required by or pursuant to, this Contract. All Services performed under any subcontract shall be subject to all of the provisions of this Contract in the same manner as if performed by employees of Consultant. Every reference in this Contract to "Consultant" shall be deemed also to refer to all sub-consultants of Consultant. Every subcontract shall include a provision binding the sub-consultant to all provisions of this Contract.

C. Removal of Personnel and Sub-Consultants. If any personnel or sub-consultant fails to perform the part of the Services undertaken by it in compliance with this Contract or in a manner reasonably satisfactory to Owner, Consultant, immediately upon notice from Owner, shall remove and replace such personnel or sub-consultant. Consultant shall have no claim for damages, for compensation in excess of the Contract Price, or for a delay or extension of the Contract Time as a result of any such removal or replacement.

1.8 Owner's Responsibilities

Owner shall, at its sole cost and expense: (i) designate in writing a person with authority to act as Owner's representative and on Owner's behalf with respect to the Services except those matters that may require approval of Owner's Board of Commissioners; (ii) provide to Consultant all criteria and full information as to Owner's requirements for the Project or work to which the Services relate, including Owner's objectives and constraints, schedule, space, capacity and performance requirements, and budgetary limitations relevant to the Project; (iii) provide to Consultant all existing studies, reports, and other available data relevant to the Project; (iv) arrange for access to and make all provisions for Consultant to enter upon public and private property as reasonably required for Consultant to perform the Services; (v) provide surveys describing physical characteristics, legal limitations, and utility locations for the Project and the services of geotechnical engineers or other consultants when such services are reasonably requested by Consultant and are necessary for the performance of the Services, and are not already provided for in this Contract; (vi) provide structural, mechanical, chemical, air and water pollution tests, test for hazardous materials, and other laboratory and environmental tests, inspections, and reports required by law to be provided by Owner in connection with the Project; (vii) review Required Submittals and other reports, documents, data, and information presented by Consultant as appropriate; (viii) except as otherwise provided in Attachment A, provide approvals from all governmental authorities having jurisdiction over the Project when such services are reasonably requested by Consultant; (ix) attend Project related meetings; and (x) give prompt written notice to Consultant whenever Owner observes or otherwise becomes aware of any development that affects the scope or timing of the Services, provided, however, that failure to give such notice shall not relieve Consultant of any of its responsibilities under this Contract.

1.9 Owner's Right to Terminate or Suspend Services for Convenience

A. Termination or Suspension for Convenience. Owner shall have the right, at any time and for its convenience, to terminate or suspend the Services in whole or in part at any time by written notice to Consultant. Every such notice shall state the extent and effective date of such termination or suspension. On such effective date, Consultant shall, as and to the extent directed, stop Services under this Contract, cease all placement of further orders or subcontracts, terminate or suspend Services under existing orders and subcontracts, and cancel any outstanding orders or subcontracts that may be canceled.

B. Payment for Completed Services. In the event of any termination pursuant to Subsection 1.9A above, Owner shall pay Consultant (i) such direct costs, including overhead, as Consultant shall have paid or incurred for all Services done in compliance with, and as required by or pursuant to, this Contract up to the effective date of termination; and (ii) such other costs pertaining to the Services, exclusive of overhead and profit, as Consultant may have reasonably and necessarily incurred as the result of such termination. Any such payment shall be offset by any prior payment or payments and shall be subject to Owner's rights, if any, to withhold and deduct as provided in this Contract.

ARTICLE II - CHANGES AND DELAYS

2.1 Changes

Owner shall have the right, by written order executed by Owner, to make changes to the timing or scope of the Services to be provided pursuant to this Contract (a "Services Change Order"). When a Change Order causes an increase or decrease in the amount of the Services, an equitable adjustment in the Contract Price or Contract Time may be made. No decrease in the amount of the Services caused by any Change Order shall entitle Consultant to make any claim for damages, anticipated profits, or other compensation. Consultant shall not undertake any change in the Services without receipt of an executed Change Order from Owner.

2.2 Delays

For any delay resulting from a cause that Consultant could not reasonably avoid or control, Consultant, upon timely written application, shall be entitled to issuance of a Change Order providing for an extension of the Contract Time for a period of time equal to the delay resulting from such unavoidable cause. No extension of the Contract Time shall be allowed for any other delay in completion of the Services.

2.3 No Constructive Change Orders

No claims for equitable adjustments in the Contract Price or Contract Time shall be made or allowed unless embodied in a Change Order. If Owner fails to issue a Change Order including or fully including an equitable adjustment in the Contract Price or Contract Time to which Consultant claims it is entitled or, if Consultant believes that any requirement, direction, instruction, interpretation, determination or decision of Owner entitles Consultant to an equitable adjustment in the Contract Price or Contract Time that has not been included or fully included in a Change Order, then Consultant shall submit to Owner a written request for the issuance of or revision of a Change Order including the equitable adjustment or the additional equitable adjustment in the Contract Price or Contract Time that Consultant claims has not been included or fully included in a Change Order. Such request shall be submitted before Consultant proceeds with any Work for which Consultant claims an equitable adjustment is due and shall, in all events, be submitted no later than two (2) business days after receipts of such Change Order or receipt of notice of such requirement, direction instruction, interpretation, determination or decision. Notwithstanding the submission of any such request, Consultant shall, unless otherwise directed by Owner within two (2) business days after receipt by Owner of such request, proceed without delay to perform the Work in compliance with the Change Order or as required, directed, instructed, interpreted or decided by Owner, and shall, pending a final resolution of the issue, keep a daily record of such Work. Unless Consultant submits such a request within two (2) business days after receipt of such Change Order or receipt of notice of such requirement, direction, instruction, interpretation, determination or decision, Consultant shall be conclusively deemed (i) to have agreed that such Change Order, requirement, direction, instruction, interpretation, determination or decision does not entitle Consultant to an equitable adjustment in the Contract Price or Contract Time; and (ii) to have waived all claims based on such Change Order, requirement, direction, instruction, interpretation, determination or decision.

ARTICLE III - CONSULTANT'S RESPONSIBILITY FOR DEFECTIVE SERVICES

3.1 Representation of Compliance

A. Scope of Representation. Consultant shall perform all Services in conformance with this Contract, free from defects and flaws in design, and in accordance with the Standard of Performance (the "Representation of Compliance").

B. Opinions of Cost. It is recognized that neither Consultant nor Owner has control over the costs of labor, material, equipment or services furnished by others or over competitive bidding, market or negotiating conditions, or construction contractors' methods of determining their prices. Accordingly, any opinions of probable Project costs or construction costs provided for herein are estimates only, made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as an experienced and qualified professional, familiar with the industry. Consultant does not guarantee that proposals, bids or actual Project costs or construction costs will not vary from opinions of probable cost prepared by Consultant.

3.2 Corrections

Consultant shall be responsible for the quality, technical accuracy, completeness and coordination of all Services under this Contract. Consultant shall correct and remedy of its errors, omissions, and negligent acts related to the Services, promptly and without charge.

3.3 Risk of Loss

The Services shall be provided, performed, and completed at the risk and cost of Consultant. Consultant shall be responsible for any and all damages to property or persons as a result of Consultant's errors, omissions, or negligent acts and for any losses or costs to repair or remedy any work undertaken by Owner based on the Services as a result of any such errors, omissions, or negligent acts. Notwithstanding any other provision of this Contract, Consultant's obligations under this Section 3.3 shall exist without regard to, and shall not be construed to be waived by, the availability or unavailability of any insurance, either of Owner or Consultant, to indemnify, hold harmless, or reimburse Consultant for such damages, losses, or costs.

ARTICLE IV - INSURANCE; INDEMNIFICATION

4.1 Insurance

Contemporaneous with Consultant's execution of this Contract, Consultant shall provide certificates and policies of insurance evidencing at least the minimum insurance coverage and limits set forth in Attachment A. For good cause shown, Owner may extend the time for submission of the required policies of insurance upon such terms, and with such assurances of complete and prompt performance, as Owner may impose in the exercise of its sole discretion. Such policies shall be in a form reasonably acceptable to Owner and from companies with a general rating of A-, and a financial size category of Class V or better, in Best's Insurance Guide and otherwise reasonably acceptable to Owner. Such insurance shall provide that no change to or cancellation of any insurance, nor any reduction in limits or coverage or other modifications affecting this Agreement, shall become effective until the expiration of thirty (30) days after written notice thereof shall have been given by the insurance company to Owner. Consultant shall, at all times while providing, performing, or completing the Services, including without limitation at all times while providing corrective Services pursuant to Section 3.2 of this Contract, maintain and

keep in force, at Consultant's expense, at least the minimum insurance coverage and limits set forth in Attachment A.

4.2 Indemnification

Consultant, without regard to the availability or unavailability of any insurance, either of Owner or Consultant, shall, to the fullest extent permitted by law, indemnify, save harmless, and reimburse Owner against any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses, including reasonable attorneys' fees, that may arise or be alleged to have arisen out of or in connection with Consultant's negligent acts, errors, or omissions, except only to the extent caused by the negligence of Owner.

ARTICLE V - PAYMENT

5.1 Contract Price

Owner shall pay to Consultant, in accordance with and subject to the terms and conditions set forth in this Article V and Attachment A, and Consultant shall accept in full satisfaction for providing, performing, and completing the Services, the amount or amounts set forth in Attachment A ("Contract Price"), subject to any additions, deductions, or withholdings provided for in this Contract.

5.2 Taxes, Benefits and Royalties

The Contract Price includes applicable federal, state, and local taxes of every kind and nature applicable to the Services as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or other similar benefits and all costs, royalties, and fees arising from the use on or the incorporation into the Services of patented equipment, materials, supplies, tools, appliances, devices, processes, or inventions. Consultant waives and releases any claim against Owner arising from the payment of any such tax, contribution, premium, benefit, cost, royalty, or fee.

5.3 Progress Payments

A. Payment in Installments. The Contract Price shall be paid in installments in the manner set forth in Attachment A ("Progress Payments").

B. Pay Requests. Consultant shall, as a condition precedent to its right to receive each Progress Payment, submit to Owner an invoice accompanied by such receipts, vouchers, and other documents as may be necessary to reasonably establish Consultant's prior payment for all labor, material, and other things covered by the invoice and the absence of any lien or other interest of any party in regard to the Services performed under this Contract. In addition to the foregoing, such invoice shall include (i) employee classifications, rates per hour, and hours worked by each classification, and, if the Services are to be performed in separate phases, for each phase; (ii) total amount billed in the current period and total amount billed to date, and, if the Services are to be performed in separate phases, for each phase; (iii) the estimated percent completion, and, if the Services are to be performed in separate phases, for each phase; and (iv) Consultant's certification that all prior Progress Payments have been properly applied to the Services with respect to which they were paid. Owner may, by written notice to Consultant, designate a specific day of each month on or before which pay requests must be submitted.

5.4 Final Acceptance and Final Payment

The Services or, if the Services are to be performed in separate phases, each phase of the Services, shall be considered complete on the date of final written acceptance by Owner of the Services or each phase of the Services, as the case may be, which acceptance shall not be unreasonably withheld or delayed. The Services or each phase of the Services, as the case may be, shall be deemed accepted by Owner if not objected to in writing within sixty (60) days after submission by Consultant of the Services or such phase of Services for final acceptance and payment plus, if applicable, such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the Services, or phase of Services, as the case may be. Within thirty (30) days after final acceptance, Owner shall pay to Consultant the balance of the Contract Price or, if the Services are to be performed in separate phases, the balance of that portion of the Contract Price with respect to such phase of the Services, after deducting therefrom charges, if any, against Consultant as provided for in this Contract ("Final Payment"). The acceptance by Consultant of Final Payment with respect to the Services or a particular phase of Services, as the case may be, shall operate as a full and complete release of Owner of and from any and all lawsuits, claims, or demands for further payment of any kind for the Services or, if the Services are performed in separate phases, for that phase of the Services.

5.5 Deductions

A. Owner's Right to Withhold. Notwithstanding any other provision of this Contract and without prejudice to any of Owner's other rights or remedies, Owner shall have the right at any time or times, whether before or after approval of any pay request, to deduct and withhold from any Progress or Final Payment that may be or become due under this Contract, such amount as may reasonably appear necessary to compensate Owner for any actual or prospective loss due to: (i) Services that are defective, damaged, flawed, unsuitable, nonconforming or incomplete; (ii) damage for which Consultant is liable under this contract; (iii) liens or claims of lien, regardless of merit; (iv) claims of Sub-consultants, suppliers or other persons, regardless of merit; (v) delay in the progress or completion of the Services; (vi) inability of Consultant to complete the Services; (vii) failure of Consultant to perform any of its obligations under this Contract; (viii) any other failure of Consultant to perform any of its obligations under this Contract; (ix) the cost to Owner including attorneys' fees and administrative costs of correcting any of the aforesaid matters or exercising any one or more of Owner's remedies set forth in Section 6.1 of this Contract.

B. Use of Withheld Funds. Owner shall be entitled to retain any and all amounts withheld pursuant to Subsection 5.5A above until Consultant shall have either performed the obligations in question or furnished security for such performance satisfactory to Owner. Owner shall be entitled to apply any money withheld or any other money due Consultant under this Contract to reimburse itself for any and all costs, expenses, losses, damages, liabilities, suits, judgments, awards, attorneys' fees and administrative expenses incurred, suffered or sustained by Owner and chargeable to Consultant under this Contract.

5.6 Accounting

Consultant shall keep accounts, books, and other records of all its billable charges and costs incurred in performing the Services in accordance with generally accepted accounting practices, consistently applied, and in such manner as to permit verification of all entries. Consultant shall make all such material available for inspection by Owner, at the office of Consultant during normal business hours during this Contract and for a period of three years after termination of this Contract. Copies of such material shall be furnished, at Owner's expense, upon request.

ARTICLE VI - REMEDIES

6.1 Owner's Remedies

If it should appear at any time prior to Final Payment that Consultant has failed or refused to prosecute, or has delayed in the prosecution of the Services with diligence at a rate that assures completion of the Services in full compliance with the requirements of this contract, or has attempted to assign this Contract or Consultant's rights under this contract, either in whole or in part, or has falsely made any representation or warranty in this Contract, or has otherwise failed, refused or delayed to perform or satisfy any other requirement of this Contract, or has failed to pay its debts as they come due ("Event of Default"), and has failed to cure any such Event of Default within five (5) business days after Consultant's receipt of written notice of such Event of Default, Owner shall have the right, at its election and without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

- A. Owner may require Consultant, within such reasonable time as may be fixed by Owner, to complete or correct all or any part of the Services that are defective, damaged, flawed, unsuitable, nonconforming or incomplete to accelerate all or any part of the Services, and to take any or all other action necessary to bring Consultant and the Services into strict compliance with this Contract.
- B. Owner may accept the defective, damaged, flawed, unsuitable, nonconforming, incomplete or dilatory Services as part thereof and make an equitable reduction in the Contract Price.
- C. Owner may terminate this Contract without liability for further payment of amounts due or to become due under this Contract.
- D. Owner may withhold from any Progress Payment or Final Payment, whether or not previously approved, or may recover from Consultant any and all costs including attorneys' fees and administrative expenses incurred by Owner as the result of any Event of Default or as a result of actions taken by Owner in response to any Event of Default.
- E. Owner may recover any damages suffered by Owner.

6.2 Terminations and Suspensions by Owner Deemed for Convenience

Any termination or suspension by Owner of Consultant's rights under this Contract for an alleged Event of Default that is ultimately held unjustified shall automatically be deemed to be a termination or suspension for the convenience of Owner under Section 1.9 of this Contract.

ARTICLE VII - LEGAL RELATIONSHIPS AND REQUIREMENTS

7.1 Binding Effect

This Contract shall be binding on Owner and Consultant and on their respective heirs, executors, administrators, personal representatives, and permitted successors and assigns. Every reference in this Contract to a party shall also be deemed to be a reference to the authorized officers, employees, agents, and representatives of such party.

7.2 Relationship of the Parties

Consultant shall act as an independent contractor in providing and performing the Services. Nothing in, nor done pursuant to, this Contract shall be construed (i) to create the relationship of principal and agent, partners, or joint ventures between Owner and Consultant or (ii) to create any relationship between Owner and any sub-consultant of Consultant.

7.3 No Collusion

Consultant hereby represents and certifies that Consultant is not barred from contracting with a unit of state or local government as a result of (i) a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless Consultant is contesting, in accordance with the procedures established by the appropriate revenue Act, its liability for the tax or the amount of the tax, as set forth in 65 ILCS 5/11-42.1-1; or (ii) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961, 720 ILCS 5/33E-1 et seq. Consultant hereby represents that the only persons, firms, or corporations interested in this Contract as principals are those disclosed to Owner prior to the execution of this Contract, and that this Contract is made without collusion with any other person, firm, or corporation. If at any time it shall be found that Consultant has, in procuring this Contract, colluded with any other person, firm, or corporation, then Consultant shall be liable to Owner for all loss or damage that Owner may suffer thereby, and this Contract shall, at Owner's option, be null and void.

Consultant hereby represents and warrants that neither Consultant nor any person affiliated with Consultant or that has an economic interest in Consultant or that has or will have an interest in the Work or will participate, in any manner whatsoever, in the Work is acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by the United States Treasury Department as a Specially Designated National and Blocked Person, or for or on behalf of any person, group, entity or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism, and neither Consultant nor any person affiliated with Consultant or that has an economic interest in Consultant or that has or will have an interest in the Work or will participate, in any manner whatsoever, in the Work is, directly or indirectly, engaged in, or facilitating, the Work on behalf of any such person, group, entity or nation.

7.4 Assignment

Consultant shall not (i) assign this Contract in whole or in part, (ii) assign any of Consultant's rights or obligations under this Contract, or (iii) assign any payment due or to become due under this Contract without the prior express written approval of Owner, which approval may be withheld in the sole and unfettered discretion of Owner; provided, however, that Owner's prior written approval shall not be required for assignments of accounts, as defined in the Illinois Commercial Code, if to do so would violate Section 9-318 of the Illinois Commercial Code, 810 ILCS 5/9-318. Owner may assign this Contract, in whole or in part, or any or all of its rights or obligations under this Contract, without the consent of Consultant.

7.5 Confidential Information

All information supplied by Owner to Consultant for or in connection with this Contract or the Services shall be held confidential by Consultant and shall not, without the prior express written consent of Owner, be used for any purpose other than performance of the Services.

7.6 No Waiver

No examination, inspection, investigation, test, measurement, review, determination, decision, certificate or approval by Owner, nor any order by Owner for the payment of money, nor any payment for or use, occupancy, possession or acceptance of the whole or any part of the Services by Owner, nor any extension of time granted by Owner, nor any delay by Owner in exercising any right under this Contract, nor any other act or omission of Owner shall constitute or be deemed to be an acceptance of any defective, damaged, flawed, unsuitable, nonconforming or incomplete Services, nor operate to waive or otherwise diminish the effect of any warranty or representation made by Consultant or of any requirement or provision of this Contract or of any remedy, power or right of Owner.

7.7 No Third Party Beneficiaries

No claim as a third party beneficiary under this Contract by any person, firm, or corporation (other than Owner and Consultant) shall be made or be valid against Owner or Consultant.

7.8 Notices

All notices required or permitted to be given under this Contract shall be in writing and shall be deemed received by the addressee thereof when delivered in person on a business day at the address set forth below or on the third business day after being deposited in the United States mail, for delivery at the address set forth below by properly addressed, postage prepaid, certified or registered mail, return receipt requested.

Notices and communications to Owner shall be addressed to, and delivered at, the following address:

NAME: Lake County Forest Preserve District
ADDRESS: 1899 West Winchester Road
CITY STATE: Libertyville, Illinois 60048
Attention: Becky Mathis, Landscape Architect

Notices and communications to Consultant shall be addressed to and delivered at the following address:

NAME: Lake Flato Architects
ADDRESS: 311 Third Street
CITY STATE: San Antonio, Texas 78205
Attention: Matt Wallace, Associate Partner

The foregoing shall not be deemed to preclude the use of other non-oral means of notification or to invalidate any notice properly given by any such other non-oral means.

By notice complying with the requirements of this Section 7.8, Owner and Consultant each shall have the right to change the address or addressee or both for all future notices to it, but no notice of a change of address or addressee shall be effective until actually received.

7.9 Governing Laws

This Contract and the rights of Owner and Consultant under this Contract shall be interpreted according to the internal laws, but not the conflict of laws rules, of the State of Illinois.

7.10 Changes in Laws

Unless otherwise explicitly provided in this Contract, any reference to laws shall include such laws as they may be amended or modified from time to time.

7.11 Compliance with Laws and Grants

Consultant shall perform, or cause its Sub-consultants to perform, the Services in accordance with all required governmental permits, licenses, or other approvals and authorizations, and with applicable statutes, ordinances, rules, and regulations. This requirement includes, but is not limited to, compliance with the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex, or other prohibited classification, including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. Consultant shall also comply with applicable conditions of any federal, state, or local grant received by Owner or Consultant with respect to this Contract or the Services.

Consultant shall be liable for any fines or civil penalties that may be imposed or incurred by a governmental agency with jurisdiction over the Services as a result of Consultant's or its sub-consultants' improper performance of, or failure to properly perform, the Services or any part thereof.

Every provision of law required by law to be inserted into this Contract shall be deemed to be inserted herein.

7.12 Ownership of Documents

Consultant and Consultant's sub-consultants shall be deemed the original authors and owners respectively of materials produced pursuant to this Contract and shall retain all common law, statutory and other reserved rights, including copyrights. Consultant hereby grants and conveys to Owner perpetual, irrevocable non-exclusive rights and license to use all Required Submittals and other materials produced under this Contract for District purposes and no other purposes. The Owner agrees to defend and hold the Consultant and the Consultant's sub-consultants harmless from any causes of action, claims, losses, damages and expenses of any nature whatsoever, including reasonable attorney's fees, resulting from any unauthorized re-use of the Consultant's and Consultant's sub-consultants' materials.

7.13 Time

The Contract Time is of the essence of this Contract. Except where otherwise stated, references in this Contract to days shall be construed to refer to calendar days.

7.14 Severability

The provisions of this Contract shall be interpreted when possible to sustain their legality and enforceability as a whole. In the event any provision of this Contract shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, in whole or in part, neither the validity of the remaining part of such provision, nor the validity of any other provisions of this Contract shall be in any way affected thereby.

7.15 Entire Agreement

This Contract sets forth the entire agreement of Owner and Consultant with respect to the accomplishment of the Services and the payment of the Contract Price therefore, and there are no other understandings or agreements, oral or written, between Owner and Consultant with respect to the Services and the compensation therefore.

7.16 Amendments

No modification, addition, deletion, revision, alteration, or other change to this Contract shall be effective unless and until such change is reduced to writing and executed and delivered by Owner and Consultant.

IN WITNESS WHEREOF, Owner and Consultant have caused this Contract to be executed as of the day and year first written above.

(SEAL)

Attest/Witness

LAKE COUNTY FOREST PRESERVE DISTRICT

By: _____
Julie Gragnani
Title: Secretary

Alex Ty Kovach
Title: Executive Director

Attest/Witness

LAKE FLATO ARCHITECTS

By: _____
Title: _____

By: _____
Bob Harris
Title: Principal

ATTACHMENT A - SUPPLEMENTAL SCHEDULE OF CONTRACT TERMS

1. Project:
Provide Phase II architectural services for Net-Zero Environmental Education Center at Edward L. Ryerson Conservation Area, which services include but are not limited to, PHIUS+ Precertification Coordination, Design Development, Construction Documents and Bidding and Negotiation for both Phase I and Phase II all as further described within the Consultant's detailed Scope of Work. See Attachment B.

2. Approvals and Authorizations:
Consultant shall obtain the following approvals and authorizations from the following governmental bodies on or before the following dates:

| <u>Approval/Authorization</u> | <u>Date</u> |
|-------------------------------|-------------|
| N/A | N/A |

3. Commencement Date:
August 1, 2021

4. Completion Date:
January 31, 2022

Anticipated Schedule for Performance of Services

| | |
|-------------------------------------|--------------------------------------|
| October 22, 2021 | Completion of Design Development |
| December 17, 2021 | Completion of Construction Documents |
| December 6, 2021 – January 31, 2022 | Bidding and Negotiation |

5. Insurance Coverage:

A. Worker's Compensation and Employer's Liability with limits not less than:

- (1) Worker's Compensation: Statutory
- (2) Employer's Liability:
 - a. \$1,000,000 injury-per-occurrence
 - b. \$500,000 disease-per-employee
 - c. \$500,000 disease-policy limit

Such insurance shall evidence that coverage applies in the State of Illinois.

B. Comprehensive Motor Vehicle Liability with limits for vehicles owned, non-owned or rented, not less than:

- (1) Bodily Injury:
 - a. \$ 500,000 - per person
 - b. \$1,000,000 - per occurrence
- (2) Property Damage:
 - a. \$ 500,000 - per occurrence
 - b. \$ 1,000,000 - aggregate

All employees shall be included as insured's.

C. Comprehensive General Liability with coverage written on an "occurrence" basis and with limits no less than:

PHASE II ARCHITECTURAL SERVICES FOR THE ENVIRONMENTAL EDUCATION FACILITY
 EDWARD L. RYERSON CONSERVATION AREA
 PROJECT NO: 61410-197-985

- (1) General Aggregate: \$2,000,000.00
- (2) Bodily Injury: \$2,000,000.00 per person
\$2,000,000.00 per occurrence
- (3) Property Damage: \$2,000,000.00 per person
\$2,000,000.00 aggregate

Coverages shall include:

- Broad Form Property Damage Endorsement
 - Blanket Contractual Liability (must expressly cover the indemnity provisions of the Contract)
- D. Professional Liability Insurance with a limit of liability of not less than \$1,000,000.00 per claim and aggregate, and covering Consultant against all sums that Consultant may be obligated to pay on account of any liability arising out of the Contract.
- E. Umbrella Policy. The required coverages may be in any combination of primary, excess and umbrella policies. Any excess or umbrella policy must provide excess coverage of underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss.
- F. Owner as Additional Insured. Owner shall be named as an Additional Insured on all policies except for:
- Worker's Compensation Policy
 - Professional Liability Insurance
- G. Other Parties as Additional Insured. In addition to Owner, the following parties shall be named as Additional Insured on the following policies:

| Additional Insured | Policy or Policies |
|--------------------|--------------------|
| <u>N/A</u> | <u>N/A</u> |

6. Contract Price:

A. Schedule of Prices - Lump Sum

For providing, performing and completing all Services, the total Contract Price of:

Five Hundred Seventy-Three Thousand Seven Hundred Twenty-Five Dollars and Zero Cents (in writing)

\$573,725 Dollars and 00 Cents (in figures)

Lump sum amount includes all travel, living and direct project expenses including printing, postage and handling. There shall be no additional costs.

For providing, performing, and completing each phase of Services, the following lump sum amount set fourth opposite each such phase:

| <u>Phase</u> | <u>Lump Sum</u> |
|------------------------|-----------------|
| Design Development | \$286,139.00 |
| Construction Documents | \$262,036.00 |
| Bidding & Negotiations | \$ 22,270.00 |
| Reimbursables | \$ 3,280.00 |

7. Payments:

Regardless of whether the Contract Price is based upon hourly rates or a lump sum, Consultant shall, not later than ten (10) days after execution of the Contract and before submitting its first pay request, submit to Owner a schedule showing the value of each component part or phase of the Services in form and with substantiating data acceptable to Owner ("Breakdown Schedule"). The sum of the items listed in the Breakdown Schedule shall equal the lump sum Contract Price or the not to exceed Contract Price, as the case may be. An unbalanced Breakdown Schedule providing for overpayment of Consultant on component parts or phases of the Services to be performed first will not be accepted. The Breakdown Schedule shall be revised and resubmitted until acceptable to Owner. No payment shall be made for Services until Consultant has submitted, and Owner has approved, an acceptable Breakdown Schedule. When a component or phase of the Services, as identified in the Breakdown Schedule, is complete, Owner will pay Consultant the value of such component or phase as provided in the Breakdown Schedule; however, Owner shall not be required to make payments more frequently than once per month.

All pay requests from Consultant shall be made using the pay request format supplied by Owner.

Owner may require that the approved Breakdown Schedule be revised based on developments occurring during the provision and performance of the Services. If Consultant fails to submit a revised Breakdown Schedule that is acceptable to Owner, Owner shall have the right either to suspend Progress and Final Payments for Services or to make such payments based on Owner's determination of the value of the Services completed.

PHASE II ARCHITECTURAL SERVICES FOR THE
ENVIRONMENTAL EDUCATION FACILITY
EDWARD L. RYERSON CONSERVATION AREA
PROJECT NO: 61410-197-985

ATTACHMENT B - CONSULTANT'S SCOPE OF WORK

June 23, 2021

Lisa Roberts
 Buyer II
 Lake County Forest Preserve District
 1899 West Winchester Road
 Libertyville, IL 60048

Dear Lisa,

This correspondence is being written in regard to the contract dated November 9, 2020 between Lake County Forest Preserve District and Lake|Flato Architects for Architectural Services for the Environmental Education Facility at the Edward L. Ryerson Conservation Area, to which we are proposing the following:

Include Lake|Flato Architects' Fees for **PHIUS+ Precertification Coordination, Design Development, Construction Documents, and Bidding and Negotiation** for both "Phase 1" and "Phase 2" in the sum of **\$570,445.00**.

Based on the scope outlined below, further fee breakdown is as follows:

| | | |
|------------------------|-----------|----------------------|
| Design Development | Fixed Fee | \$ 286,139.00 |
| Construction Documents | Fixed Fee | \$ 262,036.00 |
| Bidding & Negotiations | Fixed Fee | \$ 22,270.00 |
| Reimbursables | Fixed Fee | \$ 3,280.00 |
| Total | | \$ 573,725.00 |

Include **Construction Administration Services**, from which the sum will be as follows and dependent on phasing scenarios outlined below:

| | |
|---|---------------------|
| Scenario 1 - Phase 1 construction only, not including applicable reimbursables | \$259,180.00 |
| Scenario 2 - Phase 1 & 2 construction occurring concurrently, not including applicable reimbursables | \$284,780.00 |

The fees noted above assume the following:

- "Phase 1" definition:
 - Scope to include the North Building (Building "A" containing Classrooms A02 & A03), Screen Porch P01, adjacent exterior boardwalks and ramps, and site infrastructure as outlined in Schematic Design documents.
- "Phase 2" definition:
 - Scope to include the South Building (Building "B" containing Classrooms B02 & B03), Screen Porch P02 and adjacent exterior boardwalks and ramps.
- Deliverables included in Design Development and Construction Documents for both "Phase 1" and "Phase 2" are as follows:
 - Site plan, floor plans, enlarged floor plans, roof plan, reflected ceiling plan, door and window schedules, elevations (including interior), building sections, details and specifications.
 - Team Meetings (on site): 4 Total (2 during Design Development phase and 2 during Construction Documents phase)

- Coordination required for PHIUS+ Precertification; fees required by PHIUS for Precertification are not included.
- Deliverables during Construction Administration are as follows:
 - Scenario 1: 11 Site visits (1 per month, refer to schedule below)
 - Scenario 2: 13 Site visits (1 per month, refer to schedule below)
- Consultant work included under this fee for all phases: Civil, MEP, Structural, Wastewater, Interpretive Design, Cost Estimating (at 100% DD and Final CDs), and Specification Writer.
- Reimbursable Expenses
 - Reimbursable expenses for travel, printing, and other similar expenses will be billed at cost with a mark-up of 10% for administrative processes.
- Schedule:
 - Design Development: 12 weeks
 - Construction Documents: 12 weeks
 - Construction Administration: *Duration subject to variation pending input from Contractor*
 - Scenario 1 - Phase 1 only: 11 months
 - Scenario 2 - Phase 1 & 2 (concurrently): 13 months

Additional Services:

Additional services outside of the fees and scope mentioned above may be provided on an hourly basis. Please note hourly rates subject to change on an annual basis.

Our 2021 hourly billing rates are as follows:

| | |
|-------------------|----------|
| Partner | \$330.00 |
| Associate Partner | \$225.00 |
| Associate | \$190.00 |
| Project Architect | \$180.00 |
| Project Director | \$160.00 |
| Project Designer | \$140.00 |
| Designer | \$115.00 |
| Intern | \$65.00 |

If these revisions are acceptable to the Lake County Forest Preserve District, please signify by signing below, returning one copy to us and this correspondence will serve as an amendment to the above noted Agreement. Upon approval, we will follow this amendment with an AIA Owner / Architect agreement, which will outline the above scope, fees, and deliverables in more detail.

Accepted:

Lisa Roberts
Buyer II
Lake County Forest Preserve District

Date


Matt Wallace, AIA, LEED AP BD+C
Associate Partner
Lake|Flato Architects, Inc.

06.15.2021
Date

ATTACHMENT C - KEY PERSONNEL

1. KEY PROJECT PERSONNEL – OWNER

| NAME | TITLE | TELEPHONE NUMBER OFFICE | TELEPHONE NUMBER MOBILE | EMAIL |
|---------------|--|-------------------------|-------------------------|--|
| Becky Mathis | Landscape Architect | 847-968-3270 | 847-276-6939 | bmathis@lcfpd.org |
| Randy Seebach | Director of Planning and Land Preservation | 847-968-3262 | 847-489-6178 | rseebach@lcfpd.org |
| | | | | |
| | | | | |
| | | | | |

2. KEY PROJECT PERSONNEL – CONSULTANT

| NAME | TITLE | TELEPHONE NUMBER OFFICE | TELEPHONE NUMBER MOBILE | EMAIL |
|-----------------|---------------------|-------------------------|-------------------------|--|
| Matt Wallace | Project Lead | 210-679-2346 | 206-792-6876 | mwallace@lakeflato.com |
| Bob Harris | Principal in Charge | 210-227-3335 | 210-563-3021 | rharris@lakeflato.com |
| JT Schaffhauser | Project Designer | | 601-260-9156 | jschaffhauser@lakeflato.com |
| | | | | |
| | | | | |