
Construction Period Services Agreement

for O'Fallon Family Sports Park Phase 3

Client / City: **City of O'Fallon, Illinois**
255 South Lincoln
O'Fallon, Illinois 62269

Client's Contact: Ms. Mary Jeanne Hutchison
Telephone: (618) 624-0139 Fax: (618) 624-4508

*Construction Period
Design Lead:* **Planning Design Studio LLC** (also referred to as PDS)
727 North First Street Suite 360
Saint Louis, MO 63102

PDS Contact: Dan Bockert, Principal
Phone: (314) 241-3600x11

1.0 SCOPE OF SERVICES: The objective of the Professional Services to be provided by PDS (and their design team subconsultants) to the City of O'Fallon will be the provision of the Construction Period Design Lead Services for Phase 3 Construction of the O'Fallon Family Sports Park Project. PDS will coordinate their services with the City's designated Construction Manager (CMa). More specifically the services to be provided by PDS include:

1.1 GENERAL ADMINISTRATION

- 1.1.1** Within this document, the term Client refers to the City of O'Fallon and/or their authorized representative. The City of O'Fallon will provide PDS the name of an individual(s) authorized as their representatives to provide instruction to PDS during the construction period.
- 1.1.2** PDS shall be a representative of and shall advise and consult with the Client during the provision of the Construction Period Services. PDS shall have authority to act on behalf of the Client only to the extent provided in this Agreement unless otherwise modified by written amendment.
- 1.1.3** PDS shall review properly prepared, timely Request for Information (RFI) by the Construction Manager (CMa) for additional information about the Contract Documents. A properly prepared RFI shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.
- 1.1.4** If deemed appropriate by PDS, PDS shall on the Client's behalf, prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the CMa.
- 1.1.5** Interpretations and decisions of PDS shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings.

1.2 EVALUATION OF THE WORK

- 1.2.1** PDS representatives shall visit the site at intervals appropriate to the stage of construction operations to: (1) become generally familiar with and to keep the Client informed about the progress and quality of the portion of the Work completed; (2) endeavor to guard the Client against defects and deficiencies in the Work; and (3) determine in general if the work is being performed in a manner indicating that the work, when fully completed, will be in accordance with the Contract Documents. However, PDS shall not be required to make exhaustive or continuous on-site

Construction Period Services Agreement

for O'Fallon Family Sports Park Phase 3

inspections to check the quality or quantity of the Work. PDS shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the CMA and subcontractor's rights and responsibilities under the Contract Documents.

- 1.2.2** PDS shall report to the Client known deviations from the Contract Documents and from the most recent construction schedule submitted by the CMA. However, PDS shall not be responsible for the CMA or subcontractor's failure to perform the work in accordance with the requirements of the Contract Documents. PDS shall be responsible for PDS' negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the CMA, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.
- 1.2.3** PDS shall at all times have access to the work wherever it is in preparation or progress.
- 1.2.4** PDS shall have authority to reject work that does not conform to the Contract Documents. Whenever PDS considers it necessary or advisable, PDS will have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of PDS to the CMA, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

1.3 SUBMITTALS

- 1.3.1** PDS shall review and take appropriate action upon the CMA's submittals of subcontractor Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. PDS' action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Client, CMA or separate subcontractors; while allowing sufficient time in PDS' professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the CMA or subcontractor as required by the Contract Documents. PDS' review shall not constitute approval of safety precautions or, unless otherwise specifically stated by PDS, of any construction means, methods, techniques, sequences or procedures. PDS' approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 1.3.2** PDS, shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.
- 1.3.3** If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the subcontractor by the Contract Documents, PDS shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the CMA or

Construction Period Services Agreement

for O'Fallon Family Sports Park Phase 3

a subcontractor shall bear such professional's written approval when submitted to PDS. PDS shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

1.4 CHANGES IN THE WORK

- 1.4.1** PDS shall assist the CMa in the preparation and/or review of Change Orders and Construction Change Directives for the Client's approval and execution in accordance with the Contract Documents. PDS may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract time which are consistent with the intent of the Contract Documents. If necessary, PDS shall prepare, reproduce and distribute to the CMa, Drawings and Specifications to describe Work to be added, deleted or modified.
- 1.4.2** PDS shall review properly prepared, timely requests by the Client/CMa for changes in the work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit PDS to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If PDS determines that requested changes in the work are not materially different from the requirements of the Contract Documents, PDS may issue an order for a minor change in the Work or recommend to the Client/CMa that the requested change be denied.
- 1.4.3** If PDS determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, PDS shall make a recommendation to the Client/CMa, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the CMa, if any, PDS shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of PDS. With the Client's approval, PDS shall incorporate those estimates in a Change order or other appropriate documentation for the Client's/CMa's execution or negotiation with a subcontractor Contractor.

1.5 PROJECT COMPLETION

- 1.5.1** PDS shall conduct periodic inspections to assist the CMa in determining the date or dates of Substantial Completion and the date of final completion. PDS shall assist the Client/CMa in requiring the contractor to forward to the Client, for the Client's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor. PDS shall review a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents. PDS' inspection shall be conducted with the Client/CMa to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the subcontractors of Work to be completed or corrected.

2.0 SCHEDULE: The scope of services will be provided on an as needed basis during the construction of the project scheduled for completion by May 10, 2011.

Construction Period Services Agreement
for O'Fallon Family Sports Park Phase 3

3.0 COMPENSATION: The Client will compensate PDS for the Scope of Services, the Authorized Not-to-Exceed (NTE) Contract Amount of Three Hundred Ten Thousand Dollars (\$310,000). The NTE is based on the following:

FEE CALCULATION	Construction Budget	% of Construction Cost	NTE Value
	\$8,844,780	3.5%	\$310,000

4.0 TERMS & CONDITIONS: (See Attachment "A" to this Agreement)

5.0 ACCEPTANCE: The following authorized representatives of Planning Design Studio and the City of O'Fallon Illinois, hereby execute this Professional Services Agreement and accept the terms and conditions herein.

Planning Design Studio LLC



Signature

Daniel K. Bockert

Typed Name

Principal

Title

April 14, 2010

Date

City of O'Fallon, Illinois

Signature

Gary L. Graham

Typed Name

Mayor

Title

Date

1. INTERPRETATION

This AGREEMENT, consisting of these standard terms and conditions and the terms/instructions typed on the face of this AGREEMENT together with the Exhibits attached hereto, and all documents, drawings, specifications and instructions specifically referred to herein and made a part hereof shall constitute the entire AGREEMENT between the parties, and no other proposals, conversations, bids, memoranda, or other matter shall vary, alter or interpret the terms hereof. The captions on this AGREEMENT are for the convenience of the parties in identification of the several provisions and shall not constitute a part of this AGREEMENT nor be considered interpretative thereof.

Failure of either party to exercise any option, right or privilege under this AGREEMENT or to demand compliance as to any obligation or covenant of the other party shall not constitute a waiver of any such right, privilege or option, or the performance thereof, unless waiver is expressly required in such event or is evidenced by a properly executed instrument.

2. SEVERABILITY

It is understood and agreed by the parties hereto that if any part, term, or provision with this AGREEMENT is held illegal or in conflict with any law having jurisdiction over any of the parties hereto, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the AGREEMENT did not contain the particular part, term, or provisions held to be invalid, unless the effect thereof would materially change the economic burden of or benefit to either party.

3. GOVERNING LAW

This AGREEMENT and the Attachments hereto shall be governed by and construed in accordance with the laws governing the location where the work is performed.

4. INDEPENDENT CONTRACTOR

In the performance of the services under this AGREEMENT, PLANNING DESIGN STUDIO shall be an independent contractor, maintaining complete control of PLANNING DESIGN STUDIO's personnel and operations. As such, PLANNING DESIGN STUDIO shall pay all salaries, wages, expenses, social security taxes, unemployment taxes and any similar taxes relating to the performance of this AGREEMENT. PLANNING DESIGN STUDIO, its employees and agents shall in no way be regarded nor shall they act as agents or employees of the CLIENT.

5. CHANGES

The CLIENT, through its authorized representative, without invalidating this AGREEMENT, may order changes within the general scope of the services required by this AGREEMENT by altering, adding to and/or deducting from the services to be performed. If any changes under this clause causes an increase or decrease in PLANNING DESIGN STUDIO's cost of, or the time required for, the performance of any part of the work under this AGREEMENT, an equitable adjustment shall be made by mutual AGREEMENT and the AGREEMENT modified in writing accordingly. All such changes in the Services shall be in writing and shall be performed subject to the provisions of this AGREEMENT.

6. STOP WORK ORDER

CLIENT may at any time, by written notice to PLANNING DESIGN STUDIO, require PLANNING DESIGN STUDIO to stop all or any part of the work called for by this order for a period of up to ninety (90) days after the notice is delivered to PLANNING DESIGN STUDIO ("Stop Work Order"). Upon receipt of the Stop Work Order, PLANNING DESIGN STUDIO shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to PLANNING DESIGN STUDIO, or within any extension of that period to which the parties have agreed, CLIENT shall either cancel the Stop Work Order, or terminate the work covered by this order as provided in the "Termination" paragraphs of this AGREEMENT. PLANNING DESIGN STUDIO shall resume work upon cancellation or expiration of any Stop Work Order. An equitable adjustment shall be made in the delivery schedule or prices hereunder, or both, and this AGREEMENT shall be modified in writing accordingly. If the Stop Work order results in an increase in the time required for the performance of this order or in PLANNING DESIGN STUDIO's costs properly allocable thereto, PLANNING DESIGN STUDIO may stop work, at its sole option, if CLIENT fails to make payment of PLANNING DESIGN STUDIO invoices within 30 days of receipt as required by Article 17 below.

7. TERMINATION

A. The CLIENT may terminate this AGREEMENT in the whole or in part at any time by written notice to PLANNING DESIGN STUDIO. Such termination shall be effective in the manner specified in the said notice, shall be without prejudice to any claims which the CLIENT may have against PLANNING DESIGN STUDIO and shall be subject to the other provisions of this AGREEMENT. On receipt of such notice PLANNING DESIGN STUDIO shall, except as and to the extent directed, immediately discontinue the services and the placing of subcontractor orders for materials, facilities and supplies in connection with the performance of the services, and shall, if requested, make every reasonable effort to procure termination of existing subcontracts upon terms satisfactory to the CLIENT. Thereafter, PLANNING DESIGN STUDIO shall do only such work as may be necessary to preserve and protect the services already in progress and to dispose of any property as requested by the CLIENT.

Attachment A - Standard Terms & Conditions

O'Fallon Family Sports Park – Construction Period Services Agreement - Phase 3 Development

B. A complete settlement of all claims of PLANNING DESIGN STUDIO upon termination of the AGREEMENT, as provided in the preceding paragraph, shall be made as follows: (A) the CLIENT shall assume and become liable for all obligations and commitments that PLANNING DESIGN STUDIO may have in good faith undertaken or incurred in connection with the services which have not been included in prior payments; (B) the CLIENT shall compensate PLANNING DESIGN STUDIO for the reasonable cost of terminating existing subcontracts and preserving, protecting or disposing of the CLIENT's property and performing any other necessary services after the notice of termination has been received; and (C) the CLIENT shall pay PLANNING DESIGN STUDIO for all Services performed, prior to the date of termination, in accordance with this AGREEMENT. Prior to final settlement, PLANNING DESIGN STUDIO shall deliver to the CLIENT all Documents and all other required information and data prepared by PLANNING DESIGN STUDIO under this AGREEMENT and execute and deliver all documents, and take such other steps as are necessary, to vest fully in the CLIENT the rights and benefits of PLANNING DESIGN STUDIO arising from subcontracts issued in connection with this AGREEMENT, unless otherwise requested by the CLIENT in writing.

8. STANDARDS OF SERVICE

PLANNING DESIGN STUDIO agrees that the services to be rendered pursuant to this AGREEMENT will be performed in accordance with the standards customarily provided by an experienced and competent professional landscape architecture organization rendering the same or similar services.

PLANNING DESIGN STUDIO agrees to correct any services not conforming to the above standards and provided by PLANNING DESIGN STUDIO at no additional cost to CLIENT, provided that PLANNING DESIGN STUDIO is notified in writing by CLIENT within thirty (30) days after CLIENT first becomes aware of such non-conformity and within one (1) year after substantial completion of said services.

9. INDEMNITY

PLANNING DESIGN STUDIO shall indemnify and hold the CLIENT harmless from and against claims, liabilities, suits, loss, cost, expense and damages arising from any negligent act or omission of PLANNING DESIGN STUDIO in the performance of work and service pursuant to this AGREEMENT. PLANNING DESIGN STUDIO's liability for all of the aforesaid matters is limited to the proceeds recovered from the insurance carried by PLANNING DESIGN STUDIO and within the monetary limits of the insurance specified in Article 13 hereto after settling claims of third parties.

10. FORCE MAJEURE

The respective duties and obligations of the parties hereunder (except the CLIENT's obligation to pay PLANNING DESIGN STUDIO such sums as may become due from time to time for services rendered by it) shall be suspended while and so long as performance thereto is prevented or impeded by strikes, disturbances, riots, fire severe weather, government action, war acts, acts of God, acts of the CLIENT, or any other cause similar or dissimilar to the foregoing which are beyond the reasonable control of the part from whom the affected performance was due.

11. ASSIGNMENTS

All obligations and covenants herein contained shall be intended to be binding upon the successors and assigns of PLANNING DESIGN STUDIO and the CLIENT. PLANNING DESIGN STUDIO shall not assign this AGREEMENT without the prior written consent of the CLIENT, which consent shall not be unreasonable withheld.

12. CONSEQUENTIAL DAMAGES

In no event shall PLANNING DESIGN STUDIO or its subcontractors or vendors of any tier be liable in contract, tort, strict liability, warranty, or otherwise for any special, indirect, incidental or consequential damages, such as but not limited to, loss of product, loss of use of the equipment or system, loss of anticipated profits or revenue, nonoperation or increased expense of operation of other equipment or systems, cost of capital, or cost of purchases or replacement equipment or systems.

13. INSURANCE

PLANNING DESIGN STUDIO shall place and maintain with responsible insurance carriers the following insurance. At CLIENT's request, PLANNING DESIGN STUDIO shall deliver to CLIENT certificates of insurance, which shall provide thirty days' notice to be given to CLIENT in the event of a cancellation.

- A. Workers' Compensation and Employer's Liability insurance
 - ⊗ Workers' Compensation in compliance with the applicable laws.
 - ⊗ Employer's Liability. Limit \$1,000,000
- B. Comprehensive General Liability Insurance
 - ⊗ A combined single limit of \$1,000,000 each occurrence subject to \$2,000,000 annual aggregate
- C. Comprehensive Automobile Liability Insurance including, hired and non-owned automobiles.
 - ⊗ Bodily Injury and Property Damage to a combined single limit of \$1,000,000 each occurrence.
- D. Professional Liability Insurance affording, professional liability, if any, to
 - ⊗ A combined single limit of \$1,000,000 each claim, subject to \$1,000,000 annual aggregate.

Attachment A - Standard Terms & Conditions

O'Fallon Family Sports Park – Construction Period Services Agreement - Phase 3 Development

14. ACCEPTANCE BY CLIENT

The WORK shall be deemed accepted by CLIENT unless, within fifteen (15) days after receipt of PLANNING DESIGN STUDIO's written notification of final completion, CLIENT will have given PLANNING DESIGN STUDIO written notice specifying in detail wherein the WORK is deficient, whereupon PLANNING DESIGN STUDIO will promptly proceed to make necessary corrections and, upon completion, the Work shall be deemed accepted by CLIENT.

15. CLIENT FURNISHED DATA, DRAWINGS AND SPECIFICATIONS

PLANNING DESIGN STUDIO shall have no liability for defects in the work attributable to PLANNING DESIGN STUDIO's reliance upon or use of data, design criteria, drawings, specifications or other information furnished by CLIENT and CLIENT agrees to indemnify and hold PLANNING DESIGN STUDIO harmless from any and all claims and judgments, and all losses, costs and expenses arising therefrom. PLANNING DESIGN STUDIO shall disclose to CLIENT prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications or other information furnished by CLIENT to PLANNING DESIGN STUDIO that PLANNING DESIGN STUDIO may reasonably discover in its review and inspection thereof.

16. REUSE OF DOCUMENTS

All documents including drawings and specifications prepared by PLANNING DESIGN STUDIO pursuant to this AGREEMENT are instruments of its services in respect of the PROJECT. They are not intended or represented to be suitable for reuse by CLIENT or others on extension of the PROJECT or on any other project. Any reuse without specific written verification or adaptation by PLANNING DESIGN STUDIO will be at CLIENT's sole risk and without liability or legal exposure to PLANNING DESIGN STUDIO, and CLIENT shall indemnify and hold harmless PLANNING DESIGN STUDIO from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle PLANNING DESIGN STUDIO to further compensation at rates to be agreed upon by CLIENT and PLANNING DESIGN STUDIO.

17. INVOICING AND PAYMENT

Invoices are due and payable within 30 days after receipt. Interest at the rate of 1½% per month is due on all payments not paid on or before the 45th day after the invoice date. Interest shall be computed from the date of the invoice. In the event legal proceedings are necessary to collect payments not paid when due, CLIENT shall pay, in addition to such payments, PLANNING DESIGN STUDIO's reasonable attorney's fees and legal costs associated therewith.

In addition, PLANNING DESIGN STUDIO may, after giving seven days written notice to CLIENT, suspend services under this AGREEMENT until PLANNING DESIGN STUDIO has been paid in full all amounts due for services, expenses and charges. The contract value shall be increased accordingly by the amount of PLANNING DESIGN STUDIO's reasonable costs of shut down, delay and start up, which shall be effected by Change Order in accordance with Article 5, above.

If CLIENT disputes any portions of a request for payment, CLIENT shall pay the undisputed portion of such request as provided herein and shall promptly notify PLANNING DESIGN STUDIO of the amount in dispute and the reason therefore. Any portion of the disputed amount, which is ultimately agreed upon by CLIENT and PLANNING DESIGN STUDIO, to be owed to PLANNING DESIGN STUDIO, shall accrue interest at the rate and commencing upon the date stipulated in this Article.

Unless otherwise specified on the face page of this AGREEMENT, invoices will not require support documentation.

18. AUDIT

PLANNING DESIGN STUDIO shall maintain records and accounts on a generally recognized accounting basis to support all charges billed to CLIENT. Said records shall be available for inspection by CLIENT or his authorized representative at mutually convenient times. However, there will be no financial audit of any lump sum amount, PLANNING DESIGN STUDIO's fixed rates or unit rates or fixed percentages.

19. EQUAL EMPLOYMENT OPPORTUNITY

The Non-Discrimination clause contained in Section 202, Executive Order 11246, as amended, relating to Equal Employment Opportunity for all persons without regard to race, color, religion, sex, or national origin and the implementing rules and regulations prescribed by the Secretary of Labor (41 CFR, Chapter 60, 41 CFR 60-250 and 41 CFR 60-741 are incorporated herein.

20. ORDER OF PRECEDENCE

Any inconsistency or conflict between the standard terms and conditions set forth therein and those typed on the face of this AGREEMENT or any attachment thereof shall be resolved by giving precedence in the following order: First, typed instructions and/or conditions on the face of this AGREEMENT; Second, the Standard Terms and Conditions; and Third, the attachment(s) (if any) attached hereto.