



American Society of Landscape Architects

GUIDELINES FOR STANDARD FORM CONTRACT FOR PROFESSIONAL SERVICES BETWEEN LANDSCAPE ARCHITECT AND CLIENT *2019 Edition*

These Guidelines are for the information and convenience of the users of the ASLA Standard Form Contract for Professional Services Between Landscape Architect and Client, published in 2019. The Guidelines are not part of the agreement, nor are they commentary on or interpretation of the standard form.

*The ASLA provides the standard form document as a service to its members and their clients. **The ASLA assumes no responsibility for the appropriateness of the document or any of the provisions of the document for a particular project or in a particular jurisdiction.** The provisions of the document contemplate what has been considered a standard contractual relationship between the parties; project-specific information is required to complete the standard form, and modifications of specific provisions may be required to tailor the document to the particular project, the law of the applicable jurisdiction and the expectations of the parties.*

LEGAL AND INSURANCE COUNSEL

Because of the legal and insurance consequences of the contract, consultation with an attorney and an insurance adviser is recommended prior to contracting and with respect to the completion and modification of the standard form. In addition to jurisdictional differences in the law, counsel should be consulted with regard to changes in statutes, regulations and case law affecting the contract and occurring since the form document was published.

USE OF THE ASLA FORM DOCUMENT

Because the integrity of the ASLA standard form is important to the Society and its members, purchase and use of the document are conditioned on the following provisions governing the license to use the document.

1. License holders may not copy and/or distribute the document(s) to other individuals or firms outside of their own practice.
2. Users of the standard form are required to maintain in their files, and to provide to all parties on request, a full and complete PDF copy of the original, unmodified standard form.

AGREEMENT PROVISIONS

Date

The agreement is made “as of” the date indicated so that it will include all services performed, if any, prior to signing the contract.

Client

The Client may be the owner of the property involved or it may be another entity, such as an architect or project manager. It is important to identify the Client correctly so it is clear that they have authority to enter into the Agreement and make decisions about the Project and the Landscape Architect's services. It is also important to know if the Client has the resources to pay for the Landscape Architect's services or if payment must come from another source (e.g., from the Owner to the Architect). If the Client is a married couple, it can be a good idea for both individuals to sign the Agreement so there are no questions about who is obligated and who can issue instructions and make approvals. Similarly, if the Client is a governmental entity, the Landscape Architect must understand the limits of individual authority of the Client's representatives and must determine whether or not funding has been approved to pay for services.

Owner

Provisions from the Owner-Client agreement, if any, and/or requirements of the entity funding the services may need to be incorporated in this Agreement. Such provisions may be incorporated in an exhibit to this Agreement.

Landscape Architect

If requested, the license, registration, or certification of the individual Landscape Architect in charge of the services may be added.

Project Description

The Project description should be specific enough to establish a reasonably clear baseline against which future changes in scope or purpose can be measured. This can affect compensation and schedule.

Project-Specific Information

Project-specific information such as the Client's (or Owner's) Program, Scope of Services, Supplemental Services, Landscape Architect's hourly fees schedules, and the schedule for the performance of the Landscape Architect's services are attached as separate exhibits to this Agreement. There is no specific form provided for the Client's/Owner's Program and, sometimes, the Landscape Architect may be engaged to help in development of the Program.

Standard of Care

As a rule, Landscape Architects, like other professionals, are expected to comply with the generally accepted professional standard of skill and care (i.e., the negligence standard). Commitments to comply with some other, or more stringent, standard of care may not be insured by professional liability insurance. The Landscape Architect should consult with legal and insurance counsel if changes are made to this provision.

Scope of Services/Supplemental Services

A detailed list of services frequently included as the basic Scope of Services as well as services frequently considered Supplemental Services (i.e., services beyond the anticipated scope and requiring additional compensation), is included as Exhibit B to this Standard Form. The parties should carefully review these provisions for each Project. Services which may be generally considered to be Supplemental Services may be included within the initial scope on certain Projects. Listing some services as Supplemental can help to define the agreed upon scope by indicating what the parties believed were the limits of the initial scope of services. The more specifically the anticipated scope of the Landscape Architect's services can be described at the

time of contracting, the less chance of misunderstanding at some later point in the Project. Some services may be incorporated in different phases, depending on the Project elements and/or Project complexity.

Project Budget

If the Client requires the Project to be designed to be built at a cost that does not exceed a specific construction budget amount and the Landscape Architect agrees to meet this design requirement, the contract should expressly state the requirement and the budget amount in a provision replacing the existing 1.8. This requirement places the Landscape Architect at risk of performing additional design and documentation services without the ability to charge additional fees. **The Landscape Architect should not agree to such a provision without fully understanding the risk: If the project bids exceed the construction budget amount, the Landscape Architect may be required to redesign and revise construction documents at no additional cost to the Client.** Landscape Architects should only agree to this design requirement if they are prepared to accept this risk. The replacement provision might read as follows.

1.8 Project Budget

The Client's budget for the construction of the Project, exclusive of design fees, is the fixed amount of \$ _____. The Landscape Architect agrees to design the Project so that construction costs do not exceed this fixed limit. The Landscape Architect may include alternate bid documents reflecting reasonable adjustments in the Project scope and materials as well as contingencies for cost escalation to meet the fixed limit. If the lowest bona fide construction bid or negotiated proposal exceeds this fixed limit, the Client shall either (1) authorize in writing an increase to the fixed limit, (2) seek additional bids or negotiated proposals, (3) authorize the Landscape Architect to revise the Project scope and/or materials, without additional compensation to the Landscape Architect, or (4) abandon the Project. If the Client elects to direct the Landscape Architect to revise the Project scope and/or materials, the revision of the construction documents to reflect the modifications shall be the limit of the Landscape Architect's responsibilities under this provision, and, exclusive of any payment for the revision services, the Landscape Architect shall be entitled to full compensation for all services performed under this Agreement. If the Project is abandoned because construction bid(s) or proposal(s) exceeded the fixed limit, this Agreement shall be deemed terminated under the provisions of section 7.7 of the Agreement.

To reduce the possibility of conflict concerning construction budgets, the Landscape Architect may choose to propose a base bid package with additive alternates for bidding that allows the Client to select alternates consistent with the Client's budget parameters. However, if the additive alternate approach is used, the Landscape Architect must be careful to explain in the bid documents the manner in which additive alternates will be chosen (e.g., in a specified order, at the Client's discretion, or otherwise). Similarly, if deduct alternates are used, bid documents should clearly indicate the procedure for acceptance.

Unless the Landscape Architect has expressly agreed to meet a fixed limit of construction cost, opinions of probable construction cost provided by the Landscape Architect (consistent with the existing 1.8 provision in the form document) should not be considered to be guarantees that actual construction bids will not exceed the budgeted costs.

Certifications

Unqualified certifications may be seen as warranties and, thus, not insurable by professional liability insurance. Normal qualifications may include “in my professional opinion,” or “to the best of my knowledge, information and belief.”

Ownership of Documents

Generally, the Landscape Architect maintains the copyright in the Design Materials and licenses the Client to make specific uses of them. The Landscape Architect should be alert to a Client’s request to use the term “work made for hire” with respect to the Design Materials since that will likely transfer the copyright to the Client and have implications for future use by the Landscape Architect of standard design elements and details.

Compensation

In this standard form the Landscape Architect’s compensation for the contracted services is termed a “stipulated sum,” sometimes called a “lumped sum” or a “fixed fee.” The stipulated sum normally does NOT include either Reimbursable Expenses or compensation for Supplemental Services. The compensation provisions require modification if another payment method (e.g., “cost plus a fee”) will be used. The Landscape Architect’s Hourly Compensation Rates Schedule is to be included as Exhibit C.

Consider whether or not to require an initial payment and, if so, of what magnitude. If the Landscape Architect will work for 30 days, then send an invoice which is due in 30 days, then at least 60 days’ worth of services and expense are at risk before the first payment is even due. Obtaining an initial payment can reduce the risk of non-payment.

Insurance, Indemnification, and Consequential Damages

Indemnification provisions are governed by state law; it is recommended that such provisions be reviewed by legal counsel with knowledge of the governing law. If insurance certificates are required, they may be attached as an exhibit to this Agreement. Consequential damages are waived by both parties. If the Client does not agree to such a waiver, the Agreement should be supplemented to be very clear about the nature of the damages that the Client contemplates and the circumstances that would trigger or cause such damages.

Dispute Resolution

These provisions contemplate mediation under the Construction Industry Mediation rules of the American Arbitration Association.

Arbitration is not required in these provisions, but can be selected by the parties. Although the parties always have the option to agree to arbitration, they are often unlikely to do so if they wait until an active dispute is at hand. If arbitration is selected under the cited Rules, it will be binding and generally not appealable.

Suspension / Termination

The Landscape Architect has the right to suspend services if the Client is not making payments as required.

The Client, but not the Landscape Architect, may terminate the Agreement for “convenience” and without cause. Both parties may terminate for the other party’s substantial failure to perform under the Agreement.

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Notices

Addresses should indicate the individual to whose attention notices are to be sent.

Assignment

Clients who are obtaining financing from a commercial lender for the Project may request the right to assign the Agreement to the lender, contingent on the occurrence of certain events. This is not uncommon, and the Landscape Architect should consider having legal counsel review “consents to assignment,” if such are requested.

Limitations Period

State law generally dictates the length of applicable statutes of limitation and repose, if any. However, sometimes the event that triggers the start of the applicable time period is not clear. This provision is to establish a “not later than” date for the applicable time period. This has risk management implications.

Signature

The individuals signing on behalf of the parties should indicate the capacity in which they do so. For example, “John Smith, as President,” or “Mary Jones, Managing Member.”