

**PROFESSIONAL SERVICES CONTRACT
WITH MICHAEL VAN VALKENBURGH ASSOCIATES, INC.
FOR RFP #23-342 – DESIGNING & PROJECT ADMINISTERING SERVICES FOR
CHEVY COMMONS PLAY GARDEN**

This Contract for Professional Services (the “Contract”) is by and between the County of Genesee, a Michigan Municipal Corporation, whose principal place of business is located at 1101 Beach Street, Flint, Michigan 48502 (the “County”), and **Michael Van Valkenburgh Associates, Inc. (MVVA)**, a New York Corporation, whose principal place of business is located at **16 Court Street, 11th floor, Brooklyn, New York 11241** (the “Contractor”) (the County and the Contractor together, the “Parties”). All references to “Contractor” shall refer to the “Landscape Architect.”

1. Term

1.1 Initial Term

The initial term of this Contract commences on **March 27, 2024**, and shall be effective through completion of the project (the “Initial Term”).

1.2 Extension Terms

None.

2. Scope of Work

The Contractor agrees to perform the services described on Exhibit A (the “Services”).

3. Compensation

Budget Reimbursement. The County will reimburse the Contractor for approved expenses incurred by the Contractor in the performance of this Contract. The total amount paid to the Contractor under this Contract shall not exceed **\$892,000.00**. The Contractor’s projected budget for the Initial Term of this Contract is attached as Exhibit B (the “Budget”). If this Contract is extended, the County and the Contractor will agree in writing on a projected Budget for each Extension Term.

3.1 If requested in writing by the Contractor, and supported by good cause, the Contract Administrator may authorize a transfer between Budget line items of up to 10% of the total annual Budget for a Contract Term. No such transfer is authorized until approved in writing by the Contract Administrator.

- 3.2 The County will not approve any expense not identified in the Budget, and the County will not approve any expenses in excess of the amounts identified in the Budget.
- 3.3 The Contractor must provide to the County monthly invoices in a form acceptable to the County, along with any supporting documentation such as time sheets and receipts for incurred expenses. The County will pay the Contractor within sixty (60) days of the County's acceptance of the invoice and supporting documentation.
4. **Taxes.** The County is a Michigan Municipal Corporation. The Contractor acknowledges that the County is exempt from Federal Excise Tax and Michigan Sales Tax.

5. **Contract Administrator**

The contract administrator for this Contract is **Barry June**, or designee (the "Contract Administrator"). The Contractor acknowledges that the Contract Administrator is the primary County contact for notices and instructions related to this Contract. The Contractor agrees to provide a copy of all notices related to this Contract to the Contract Administrator.

6. **Representations**

The Contractor represents that:

- 6.1 The Services will be performed in a good and workmanlike manner and in accordance with generally acceptable practices in the industry.
- 6.2 The Contractor will comply with all federal, state, and local laws in the performance of the Services.
- 6.3 The Contractor will comply with the requirements of any federal or state grants used to fund or support this Contract.
- 6.4 The Contractor will obtain and maintain all applicable licenses and permits necessary to provide the Services for the entire term of this Contract.
- 6.5 The Contractor will obtain and maintain all applicable licenses and permits necessary to provide the Services for the entire term of this Contract.

The Contractor agrees to indemnify, defend, and hold harmless the County, its officials, officers, agents, and employees from any and all claims, damages, or liability, including defense costs, arising out of the Contractor's breach of these representations.

7. Suspension of Work

7.1 Order to Suspend Performance

Upon written order of the Contract Administrator, the Contractor agrees to immediately suspend performance of the Services. The Contractor shall not be entitled to compensation for any Services performed during any period in which the Contract Administrator has directed that the Services be suspended.

7.2 Necessary Actions Before Suspension

If immediate suspension of the Services would cause harm, injury, or damage to persons or property, the Contractor must immediately notify the Contract Administrator of the nature of such harm, injury, or damage, and obtain written authorization from the Contract Administrator to take such necessary action as to prevent or minimize such harm, injury or damage. Actions authorized by the Contract Administrator pursuant to this paragraph are compensable.

8. Termination

8.1 Termination for Cause

If the Contractor is in breach of any provision of this Contract, and such breach continues for fourteen (14) days after written notice is issued to the Contractor by the County of the breach, the County may terminate this Contract. Such termination for cause is effective upon receipt of the notice of termination by the Contractor.

In addition to any other remedies provided by law or this Contract, to the extent that the Contractor is found liable for a breach of this Contract be a final, binding judgment, the Contractor shall be responsible for all costs incurred by the County as a result of the Contractor's breach and termination, including any costs to obtain substitute performance.

8.2 Immediate Termination

If the County, in its discretion, determines that the Contractor's breach of this Contract constitutes a threat to public health, safety, or welfare, the County may terminate this Contract immediately upon notice to the Contractor.

In addition to any other remedies provided by law or this Contract, to the extent that the Contractor is found liable for a breach of this Contract be a final, binding judgment, the Contractor shall be responsible for all costs incurred by the County as a result of the Contractor's breach and termination, including any costs to obtain substitute performance.

8.3 Termination for Convenience

If the County determines that it is in the County's best interests, the County may terminate this Contract upon thirty (30) days written notice to the Contractor.

The County shall pay for all work properly performed up to the effective date of the notice of termination.

8.4 Termination for Lack of Funding

If this Contract is funded by public funds or a grant from a public or private entity, and the funds are not appropriated or the grant is discontinued, the County may terminate this Contract by written notice specifying the date of termination.

The County shall pay for all work properly performed up to the effective date of the notice of termination.

9. Equipment Purchased with County Funds

9.1 The Contractor shall not purchase Equipment for the performance of this contract using funds provided by the County unless such purchase is clearly identified in a line item in Contractor's Budget.

9.2 Reporting

The Contractor agrees that any Equipment purchased for the performance of the Services with funds supplied by the County under this Contract must be reported to the Contract Administrator upon purchase. For the purposes of this paragraph, Equipment is defined as tangible, non-expendable, personal property having useful life of more than 1 year and an acquisition cost of \$5,000 or more per unit.

9.3 Conveyance to the County

Upon the County's request at the termination of this Contract for any reason, the Contractor agrees to convey to the County all title in any Equipment purchased for the performance of the Services with funds supplied by the County under this Contract.

10. Nondiscrimination

The Contractor covenants that it will not discriminate against an employee or applicant of employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, sexual identity, gender, gender identity, gender expression, height, weight, marital status or a disability

that is unrelated to the individual's ability to perform the duties of a particular job or position, and that it will require the same non-discrimination assurances from any subcontractor who may be used to carry out duties described in this contract. Contractor covenants that it will not discriminate against businesses that are owned by women, minorities or persons with disabilities in providing services covered by this Contract, and that it shall require the same assurances from subcontractors. Breach of this covenant shall be regarded as a material breach of this contract.

11. Freedom of Information Act

This Contract and all attachments, as well as any other information submitted by the Contractor to the County, are subject to disclosure under the provisions of MCL 15.231, *et seq.*, known as the "Freedom of Information Act".

12. Intellectual Property

Any intellectual property created by the Contractor in the performance of the Services shall be considered Instruments of Service, and the ownership of all rights, including the copyright, shall remain with the Architect. The Architect shall provide the County with a perpetual, royalty-free license to use the Instruments of Services for purposes of completing the project for which they were developed, provided that the County complies with its payment obligations hereunder. In the event that the County uses or modifies the Instruments of Service without the participation of the Architect, the County shall release the Architect from and against all claims arising out of such modification or use.

13. Audit Rights

13.1 Certification of Accurate Information

Contractor certifies that all information provided to the County by the Contractor relating to the award or modification of this Contract, or any payment or dispute related to this Contract, is true and correct. The Contractor further certifies that its accounting system conforms to generally accepted accounting principles.

13.2 Inspection

The Contractor agrees that the County may inspect the Contractor's plant, place of business, or worksite to ensure compliance with the terms of this Contract. If this Contract is funded or supported with any state or federal grant funds, the state or federal agencies responsible for administering the applicable grants may examine the Contractor's plant, place of business, or worksite to ensure compliance with the terms of this Contract and the terms of the applicable grant.

13.3 Audit

The Contractor agrees that the County may examine the Contractor's records to ensure compliance with the terms of this Contract. If this Contract is funded or supported with any state or federal grant funds, the state or federal agencies responsible for administering the applicable grants may examine the Contractor's records to ensure compliance with the terms of this Contract and the terms of the applicable grant.

13.4 Records Retention

The Contractor agrees to maintain any business records related to this Contract or the Contractor's performance under this Contract for a period of at least three (3) years after final payment.

14. Identity Theft Prevention

14.1 In the event that the Contractor will obtain identifying information during the performance of the Services, the Contractor must take reasonable precautions to ensure that such identifying information is protected from unauthorized disclosure and is used only for the purpose of performing the Services.

14.2 For the purposes of this Paragraph, "identifying information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including but not limited to name, address, telephone number, social security number, date of birth, driver's license number, taxpayer identification number, or routing code.

15. Insurance Requirements and Indemnification

The Contractor shall at all times maintain in full force and effect for duration of the term of this agreement the following insurance coverages. All coverage shall be with insurance companies licensed and admitted to do business in the State of Michigan, having an AM Best rating of at least A- and acceptable to Genesee County. *In addition, the County reserves the right to modify or waive at any time any applicable insurance requirements based on the scope of services provided at the discretion of the County's Risk Manager or other authorized representative of the County.*

Commercial General Liability Insurance on an "occurrence basis" with minimum limits of \$1,000,000 per occurrence and a \$2,000,000 aggregate limit.-. The policy shall name Genesee County, including all employees, elected and appointed officials and volunteers, all boards, commissions, and/or authorities, and their board members, employees, and volunteers as additional insureds. Coverage shall be primary and non-contributory, including a waiver of subrogation in favor of the County.

Workers' Compensation Insurance – as required by and in accordance with all applicable statutes of the State of Michigan, including Employers' Liability Coverage.

Automobile Liability – Including Michigan No-Fault coverages, with limits of liability not less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage. Coverage shall include all owned, non-owned, and hired vehicles. Limits may be satisfied using primary and excess/umbrella liability policies. -. The policy shall name Genesee County, including all employees, elected and appointed officials and volunteers, all boards, commissions, and/or authorities, and their board members, employees, and volunteers as additional insureds.

Professional Liability Insurance – in an amount not less than \$1,000,000 per occurrence and \$1,000,000 aggregate. If this policy is a claims made form, the Contractor shall be required to keep said policy in force, or purchase "tail" coverage for a minimum of three (3) years after the termination of this contract.

A licensee or its insurance broker shall notify the County of any cancellation or reduction in coverage within seven (7) days of receipt of insurer's notification to that effect. The contractor, licensee, permittee, or lessee shall forthwith obtain and submit proof of substitute insurance to the County Risk Manager within five (5) business days in the event of expiration or cancellation of coverage.

15.1 Insurance Certificate and Additional Insured Coverage

1. **Certificate of Insurance** – The contractor must provide a Certificate of Insurance evidencing the required insurance set forth above. The Certificate Holder should be listed as follows:

Genesee County
Attn: Risk Management
1101 Beach Street, Flint, MI 48502

2. **Endorsements** In addition, the contractor must provide the following endorsements, including but not limited to:

- a. An additional insured endorsement (equivalent in coverage to ISO form CG 20 10 and CG 20 37) naming the "Genesee County, its officials, employees and agents, all boards, commissions and/or authorities and board members, including employees and volunteers thereof" as additional insureds under the general liability policy. No person or department should be identified as the additional insured. Coverage afforded shall be considered primary and any other insurance or self-

insurance, maintained by or available to the County shall be considered secondary and/or excess.

- b. An endorsement to each policy stating that such policy shall not be cancelled or reduced in coverage except after thirty (30) days prior written notice to County. Cancellation, material restriction, nonrenewal or lapse of any of the required policies shall be grounds for immediate termination of the Agreement by the County. If any of the required coverages expire during the term of the contract, the vendor shall deliver renewal certificates, endorsements, and/or policies to County at least ten (10) days prior to the expiration date.

In lieu of required endorsements, a copy of the policy sections, where coverage is provided for additional insured and cancellation notice, may be acceptable. Copies of all policies mentioned above shall be furnished, if so requested.

15.2 Indemnification

The Contractor agrees to indemnify, defend, and hold harmless the County, its officials, officers, agents, and employees from third party judgments, any and all claims, damages, or liability, including defense costs, to the extent arising out of the Contractor's negligent performance of the Services. Contractor's duty to indemnify the County and/or the Architect's liability to the County for negligent errors or omissions in the performance of the Architect's Services, shall be limited to the amounts payable under the insurance coverages required by this Contract. The Parties expressly waive indirect, special or consequential damages arising out of this Contract or any damages caused by MVVA's employees while on the County's property or worksite. Contractor agrees that the insurance requirements specified in the contract do not reduce the liability Contractor has assumed in the indemnification/hold harmless section of the Contract.

16. Independent Contractor

The Contractor and its agents and employees are independent contractors and are not the employees of the County.

17. General Provisions

17.1 Entire Contract

This Contract, consisting of the following documents and Exhibits, embodies the entire Contract between the Parties.

17.1.1. The Contract – This Professional Services Contract

17.1.2. Exhibit A – The Scope of Work

17.1.3. Exhibit B – Insurance Checklist

17.1.4. Exhibit C – The Contractor’s Budget

There are no promises, terms, conditions, or obligations relating to the Services other than those contained herein. In the event of a conflict between this Contract and any Exhibit, the terms of this Contract shall control.

17.2 No Assignment

The Contractor may not assign or subcontract this Contract without the express written consent of the County.

17.3 Modification

This Contract may be modified only in writing executed with the same formalities as this Contract.

17.4 Binding Effect

The provisions of this Contract shall apply to and bind the heirs, executors, administrators, and assigns all of the parties hereto.

17.5 Headings

The paragraph headings in this Contract are used only for ease of reference, and do not limit, modify, construe, and or interpret any provision of this Contract.

17.6 Governing Law and Venue

This Contract is entered into under the laws of the State of Michigan. Any litigation between the Parties arising out of this Contract must be initiated within two years of the cause of action accruing and must be brought in a court of competent jurisdiction in Genesee County, Michigan. Parties agree to mediation precedent to litigation.

17.7 Subpoena Power

The Contractor acknowledges and understands that the Chairperson of the Genesee County Board of Commissioners, pursuant to MCL 46.3(5), as amended, has the power to administer oaths, issue subpoenas, and compel a person’s attendance in the same manner as a court of law. The Contractor agrees to submit to this power with respect to this Contract.

17.8 Severability and Survival

In the event that any provision of this Contract is deemed by any court of competent jurisdiction to be legally ineffective, such decision shall have no effect on the remaining provisions of this Contract.

17.9 Interpretation

Each Party has had opportunity to have this Contract reviewed by legal counsel and has had equal opportunity to contribute to its contents. In the event of any dispute concerning the interpretation of this Contract, there shall be no presumption in favor of any interpretation solely because the form of this Contract was prepared by the County.

17.10 Remedies

All remedies specified in this Contract are non-exclusive. The County reserves the right to seek any and all remedies available under this Contract and applicable law in the event that the Contractor fails to abide by the terms of this Contract.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their duly authorized agents.

MICHAEL VAN VALKENBURGH
ASSOCIATES, INC.

By: A.P. Seck

Name:

Title:

Date: 2/28/2024

COUNTY OF GENESEE

By: James Avery

James Avery, Chairperson

Board of County Commissioners

Date: 4/8/24

EXHIBIT A

Description of the Services

The Consultant shall design and administer the construction of a play garden, approximately 3 acres in size, for Chevy Commons, 800 W. Kearsley St., Flint, MI 48503. Chevy Commons was transformed in recent years from a vacant Brownfield site into a nationally recognized 67-acre park that includes walking trails and low-maintenance grasslands, meadows, and wetlands. In 2022, Chevy Commons was announced as a defining feature of a newly established state park in Flint & Genesee County.

The play garden will provide an outdoor environment for play inspired by nature of an unrivaled regional quality that will both draw new visitors and expand use for existing visitors. Whereas the existing Chevy Commons landscape provides a network of non-motorized trails for pedestrians and cyclists to circulate the park, the new play garden will offer a gathering place within the park. Creating a renowned gathering place for natural play requires thinking beyond playground equipment. The design will not only create play spaces, but it will also:

- i. consist of play features inspired by nature
- ii. engage children of all ages in natural play
- iii. stimulate children physically and cognitively
- iv. provide for parent and caretaker use and observation across the play garden
- v. integrate elements that honor Flint's history and context

The design will be guided by three key principles: nature, novelty, and connectivity, as outlined below.

- **Nature.** The play garden is inspired by nature to engage children of all ages in natural play. All aspects of design – layout, equipment, materials, landscaping, etc. draw from and point to the natural world.
- **Novelty.** Create an experience that is unique to Chevy Commons. Design a one-of-a-kind gathering place for natural play that is enjoyable for children, parents, and caretakers of all ages and draws families from across the region and beyond.
- **Connectivity.** The play garden is connected to and complimentary of the broader Chevy Commons landscape, adjacent amenities and improvements, and Flint's specific history and context.

The Planning & Design work will position the project for construction by delivering design plans, specifications and special provisions, landscape architecture design, and all bid documents necessary for this project. The Planning & Design phase is expected to be completed within 12 months of project commencement. The construction administration work will commence upon the release of the construction bid and will conclude once all construction work has been completed.

General

1. The Scope of Services consists of performing to the satisfaction of the Commission:
 - a) The preparation of design plans
 - b) Specifications
 - c) Special provisions
 - d) All bid documents necessary for this project to be advertised for bids to the satisfaction of the Michigan Department of Natural Resources (MDNR).
 - e) All surveying, testing and field investigation necessary to ascertain existing conditions to complete the design of this project.
 - f) On-site construction observation, preparation of construction paperwork, construction staking, construction management, and testing services necessary to accomplish the work described herein consistent with applicable professional standards.
2. The Consultant or its sub-consultant shall furnish all services and labor necessary to conduct and complete Services described herein. The Consultant or its sub-consultant shall also furnish all materials, equipment, supplies, and incidentals necessary to perform the Services (other than those designated in writing to be furnished by the Commission) and check and/or test them prior to use in carrying out this work.
3. The Consultant's principal contact with the Commission shall be through the designated Project Supervisor.
4. At the request of the Commission, the Consultant, during the progress of the Services, shall furnish information or data relating to the Services described herein and may be required by the Commission to enable it to carry out or to proceed with related phases of the Project not described herein, or which may be necessary to enable the Commission to furnish information to the Consultant upon which to proceed with further Services.
5. The Consultant agrees to demonstrate knowledge and performance in compliance with the standard construction practices listed in the above reference material and any other references, guidelines, and procedures manuals needed to carry out the work described herein in an appropriate manner.

SERVICES TO BE PERFORMED BY THE CONSULTANT

Consultant shall perform all necessary design, surveying, engineering design, final engineering, preparation of specifications, drawings for construction, budgeting, bidding documents, securing site plan and construction plan approvals, bidding assistance, and construction administration services.

Documents to include, but not limited to, location map, all specifications for paving and grading, soils and aggregates for earthwork, underground storm drainage and

surface water drainage, lighting and electrical service, playground safety surfacing, asphalt or concrete paving, concrete curbs, gutter and sidewalks, and pavement marking. Consultant shall visit the site and become familiar with the project before submitting a proposal.

All cost arising from the field survey(s), investigations, presentations and meetings/conferences with the county, and documentation of same, shall be included in the Cost Proposal.

Special Notes:

1. This play garden will be constructed on a former industrial site that has a Due Care Plan in place with the Environmental Protection Agency.
2. All construction must occur above the designated "Cap" of the former industrial site and should be done in coordination with the cap engineers - Wade Trim
3. Some portions of the area may occur in a floodway of the Flint River. Care should be taken in the design to minimize obstruction of the floodway. Permits for construction in this area must be obtained from the Michigan Department of Environment, Great Lakes and Energy (EGLE).

Design Phase:

The successful Consultant shall perform fieldwork and provide a survey in sufficient scope to accomplish the project, prepare budget, complete construction contract documents and submit them for review and acceptance by the County and any other review agencies. The construction plans shall be prepared in AutoCAD for reproduction and all drawings shall conform to standard State practices. Construction plans shall be accompanied by supplementary specifications prepared in Microsoft Word.

Plans and design calculations shall be submitted for review/comments by the Commission, prior to final submission. After incorporating the review comments in the plans, a final submittal shall be made. An electronic version of the plans and specifications, as well as the final submission documents (PDF with signatures) shall be provided to the Commission upon completion.

Bidding and Construction Services (Construction Administration):

During this phase, as required by the Commission, the Consultant will perform the following:

1. Provide bidding documents and clarifications during the bidding period
2. Review working drawings
3. Attend a preconstruction meeting
4. Provide onsite inspection and observation as required to ensure project is constructed as designed.

Payment:

Progress of work and invoices shall be furnished to the County. Payment after completion of final plans, shall be limited to 90% of the agreed cost. The remaining 10% shall be paid after substantial completion of all construction work if the Consultant is providing construction administration services.

EXHIBIT B
Insurance Checklist

(attached as a separate attachment)

EXHIBIT C

Contractor's Projected Budget

Feasibility Study to Develop Geotechnical and Environmental Scope	\$12,000
Play Garden	
Schematic Design	\$90,000
Design Development	\$230,000
Construction Docs & Bidding	\$260,000
Construction Administration	\$230,000
Expenses	
Reimbursable Expenses	\$60,000
Site Survey prepared by NFE \$9,000	
Total:	\$892,000

Permits (each) by NFE \$1,500

Reimbursable Expenses

Any reimbursable project expenses will be billed as accrued. The reimbursable project expenses will include long distance telephone calls, postage, local and long-distance couriers, photography, photocopying, reprographics, and project supplies, including in and out of house printing, and model-making supplies. Reimbursable expenses also include travel related expenses for trips to the project site to include airfare, accommodations, meals, local ground transportation, and miscellaneous per diem expenses as required.

Additional Services

The County shall pay the Architect at hourly rates of its own personnel and/or the amount billed to the Architect by its engineers and other consultants, for services performed at the County's request which are outside of the scope of basic services described in the Contract, including but not limited to services provided in connection with changes made at the County's request which are either inconsistent with prior approvals by the County or due to failures of performance by the County or its contractors; services necessitated by changes in the project's scope, size, quality, budget or schedule; preparing for or attending a public hearing or legal proceeding; or providing construction phase services 60 days after substantial completion of the work.

Overall Proposed Cost Overview:

Work Performed	Proposed Cost
Planning and Design	\$632,000
Construction Observation	\$260,000