



## Professional Services Agreement

This AGREEMENT (Agreement) is made today June 8, 2021 by and between SAUK COUNTY (OWNER) and MSA PROFESSIONAL SERVICES, INC. (MSA), which agree as follows:

**Project Name:** ADA Access Audit and Transition Plan for Sauk County Park and Recreation Facilities

**The scope of the work authorized is:** See Exhibit A – Scope of Services

**The schedule to perform the work is:** Approximate Start Date: 7/1/2021  
Approximate Completion Date: 11/30/2021

**The lump sum fee for the work is:**

Phase 1 -	\$10,000
Phase 2 -	\$4,300
Phase 3 -	\$2,200
<u>Expenses -</u>	<u>\$500</u>
Total -	\$18,600

All services shall be performed in accordance with the General Terms and Conditions of MSA, which is attached and made part of this Agreement. Any attachments or exhibits referenced in this Agreement are made part of this Agreement. Payment for these services will be on a lump sum basis.

**Approval:** Authorization to proceed is acknowledged by signatures of the parties to this Agreement.

**SAUK COUNTY**

\_\_\_\_\_  
Lisa Wilson, AICP - Director  
Sauk Co. Land Resources and Environment  
Date: \_\_\_\_\_

Attest: County Clerk

\_\_\_\_\_  
Clerk Name: \_\_\_\_\_  
Date: \_\_\_\_\_

505 Broadway  
Baraboo, WI 53913  
Phone: 608-355-3245  
lisa.wilson@saukcountywi.gov

**MSA PROFESSIONAL SERVICES, INC.**

\_\_\_\_\_  
*Raine Gardner*  
Raine Gardner, P.E.  
Team Leader  
Date: 6/8/2021

\_\_\_\_\_  
*Daniel Schmitt*  
Daniel Schmitt, PLA.  
Project Manager/Landscape Architect  
Date: 6/8/2021

1230 South Blvd  
Baraboo, WI 53913  
Phone: 608-355-8895  
rgardner@msa-ps.com

**MSA PROFESSIONAL SERVICES, INC. (MSA)**  
**GENERAL TERMS AND CONDITIONS OF SERVICES (PUBLIC)**

1. **Scope and Fee.** The quoted fees and scope of services constitute the best estimate of the fees and tasks required to perform the services as defined. This agreement upon execution by both parties hereto, can be amended only by written instrument signed by both parties. For those projects involving conceptual or process development service, activities often cannot be fully defined during initial planning. As the project progresses, facts uncovered may reveal a change in direction which may alter the scope. MSA will promptly inform the OWNER in writing of such situations so that changes in this agreement can be made as required. The OWNER agrees to clarify and define project requirements and to provide such legal, accounting and insurance counseling services as may be required for the project

2. **Billing.** MSA will bill the OWNER monthly with net payment due upon receipt. Past due balances shall be subject to an interest charge at a rate of 12% per year from said thirtieth day. In addition, MSA may, after giving seven days written notice, suspend service under any agreement until the OWNER has paid in full all amounts due for services rendered and expenses incurred, including the interest charge on past due invoices.

3. **Costs and Schedules.** Costs and schedule commitments shall be subject to change for delays caused by the OWNER's failure to provide specified facilities or information or for delays caused by unpredictable occurrences including, without limitation, fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults, by suppliers of materials or services, process shutdowns, acts of God or the public enemy, or acts of regulations of any governmental agency. Temporary delays of services caused by any of the above which result in additional costs beyond those outlined may require renegotiation of this agreement.

4. **Access to Site.** Owner shall furnish right-of-entry on the project site for MSA and, if the site is not owned by Owner, warrants that permission has been granted to make planned explorations pursuant to the scope of services. MSA will take reasonable precautions to minimize damage to the site from use of equipment, but has not included costs for restoration of damage that may result and shall not be responsible for such costs.

5. **Location of Utilities.** Consultant shall use reasonable means to identify the location of buried utilities in the areas of subsurface exploration and shall take reasonable precautions to avoid any damage to the utilities noted. However, Owner agrees to indemnify and defend Consultant in the event of damage or injury arising from damage to or interference with subsurface structures or utilities which result from inaccuracies in information of instructions which have been furnished to Consultant by others.

6. **Professional Representative.** MSA intends to serve as the OWNER's professional representative for those services as defined in this agreement, and to provide advice and consultation to the OWNER as a professional. Any opinions of probable project costs, reviews and observations, and other decisions made by MSA for the OWNER are rendered on the basis of experience and qualifications and represents the professional judgment of MSA. However, MSA cannot and does not guarantee that proposals, bid or actual project or construction costs will not vary from the opinion of probable cost prepared by it.

7. **Construction.** This agreement shall not be construed as giving MSA, the responsibility or authority to direct or supervise construction means, methods, techniques, sequence, or procedures of construction selected by the contractors or subcontractors or the safety precautions and programs incident to the work of the contractors or subcontractors.

8. **Standard of Care.** In conducting the services, MSA will apply present professional, engineering and/or scientific judgment, and use a level of effort consistent with current professional standards in the same or similar locality under similar circumstances in performing the Services. The OWNER acknowledges that "current professional standards" shall mean the standard for professional services, measured as of the time those services are rendered, and not according to later standards, if such later standards purport to impose a higher degree of care upon MSA.

MSA does not make any warranty or guarantee, expressed or implied, nor have any agreement or contract for services subject to the provisions of any uniform commercial code. Similarly, MSA will not accept those terms and conditions offered by the OWNER in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly agreed to in writing. Written acknowledgement of receipt, or the actual performance of services subsequent to receipt of such purchase order, requisition, or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein.

9. **Construction Site Visits.** MSA shall make visits to the site at intervals appropriate to the various stages of construction as MSA deems necessary in order to observe, as an experienced and qualified design professional, the progress and quality of the various aspects of Contractor's work.

The purpose of MSA's visits to, and representation at the site, will be to enable MSA to better carry out the duties and responsibilities assigned to and undertaken by MSA during the Construction Phase, and in addition, by the exercise of MSA's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. On the other hand, MSA shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall MSA have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, MSA neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

10. **Termination.** This Agreement shall commence upon execution and shall remain in effect until terminated by either party, at such party's discretion, on not less than thirty (30) days' advance written notice. The effective date of the termination is the thirtieth day after the non-terminating party's receipt of the notice of termination. If MSA terminates the Agreement, the OWNER may, at its option, extend the terms of this Agreement to the extent necessary for MSA to complete any services that were ordered prior to the effective date of termination. If OWNER terminates this Agreement, OWNER shall pay MSA for all services performed prior to MSA's receipt of the notice of termination and for all work performed and/or expenses incurred by MSA in terminating Services begun after MSA's receipt of the termination notice. Termination hereunder shall operate to discharge only those obligations which are executory by either party on and after the effective date of termination. These General Terms and Conditions shall survive the completion of the services performed hereunder or the Termination of this Agreement for any cause.

This agreement cannot be changed or terminated orally. No waiver of compliance with any provision or condition hereof should be effective unless agreed in writing and duly executed by the parties hereto.

11. **Betterment.** If, due to MSA's error, any required or necessary item or component of the project is omitted from the construction documents, MSA's liability shall be limited to the reasonable costs of correction of the construction, less what OWNER'S cost of including the omitted item or component in the original construction would have been had the item or component not been omitted. It is intended by this provision that MSA will not be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the project.

12. **Hazardous Substances.** OWNER acknowledges and agrees that MSA has had no role in generating, treating, storing, or disposing of hazardous substances or materials which may be present at the project site, and MSA has not benefited from the processes that produced such hazardous substances or materials. Any hazardous substances or materials encountered by or associated with Services provided by MSA on the project shall at no time be or become the property of MSA. MSA shall not be deemed to possess or control any hazardous substance or material at any time; arrangements for the treatment, storage, transport, or disposal of any hazardous substances or materials, which shall be made by MSA, are made solely and exclusively on OWNER's behalf for OWNER's benefit and at OWNER's direction. Nothing contained within this Agreement shall be construed or interpreted as requiring MSA to assume the status of a generator, storer, treater, or disposal facility as defined in any federal, state, or local statute, regulation, or rule governing treatment, storage, transport, and/or disposal of hazardous substances or materials.

All samples of hazardous substances, materials or contaminants are the property and responsibility of OWNER and shall be returned to OWNER at the end of a project for proper disposal. Alternate arrangements to ship such samples directly to a licensed disposal facility may be made at OWNER's request and expense and subject to this subparagraph.

13. **Insurance.** MSA will maintain insurance coverage for: Worker's Compensation, General Liability, and Professional Liability. MSA will provide information as to specific limits upon written request. If the OWNER requires coverages or limits in addition to those in effect as of the date of the agreement, premiums for additional insurance shall be paid by the OWNER. The liability of MSA to the OWNER for any indemnity commitments, or for any damages arising in any way out of performance of this contract is limited to such insurance coverages and amount which MSA has in effect.

14. **Reuse of Documents.** Reuse of any documents and/or services pertaining to this project by the OWNER or extensions of this project or on any other project shall be at the OWNER's sole risk. The OWNER agrees to defend, indemnify, and hold harmless MSA for all claims, damages, and expenses including attorneys' fees and costs arising out of such reuse of the documents and/or services by the OWNER or by others acting through the OWNER.

15. **Indemnification.** To the fullest extent permitted by law, MSA shall indemnify and hold harmless, OWNER, and OWNER's officers, directors, members, partners, agents, consultants, and employees (hereinafter "OWNER") from reasonable claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of MSA or MSA's officers, directors, members, partners, agents, employees, or Consultants (hereinafter "MSA"). In no event shall this indemnity agreement apply to claims between the OWNER and MSA. This indemnity agreement applies solely to claims of third parties. Furthermore, in no event shall this indemnity agreement apply to claims that MSA is responsible for attorneys' fees. This agreement does not give rise to any duty on the part of MSA to defend the OWNER on any claim arising under this agreement.

To the fullest extent permitted by law, OWNER shall indemnify and hold harmless, MSA, and MSA's officers, directors, members, partners, agents, consultants, and employees (hereinafter "MSA") from reasonable claims, costs, losses, and damages arising out of or relating to the PROJECT, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of the OWNER or the OWNER's officers, directors, members, partners, agents, employees, or Consultants (hereinafter "OWNER"). In no event shall this indemnity agreement apply to claims between MSA and the OWNER. This indemnity agreement applies solely to claims of third parties. Furthermore, in no event shall this indemnity agreement apply to claims that the OWNER is responsible for attorneys' fees. This agreement does not give rise to any duty on the part of the OWNER to defend MSA on any claim arising under this agreement.

To the fullest extent permitted by law, MSA's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss or damages caused in part or by the negligence of MSA and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that MSA's negligence bears to the total negligence of OWNER, MSA, and all other negligent entities and individuals.

16. **Dispute Resolution.** OWNER and MSA desire to resolve any disputes or areas of disagreement involving the subject matter of this Agreement by a mechanism that facilitates resolution of disputes by negotiation rather than by litigation. OWNER and MSA also acknowledge that issues and problems may arise after execution of this Agreement which were not anticipated or are not resolved by specific provisions in this Agreement. Accordingly, both OWNER and MSA will endeavor to settle all controversies, claims, counterclaims, disputes, and other matters in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, unless OWNER and MSA mutually agree otherwise. Demand for mediation shall be filed in writing with the other party to this Agreement. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. Neither demand for mediation nor any term of this Dispute Resolution clause shall prevent the filing of a legal action where failing to do so may bar the action because of the applicable statute of limitations. If despite the good faith efforts of OWNER and MSA any controversy, claim, counterclaim, dispute, or other matter is not resolved through negotiation or mediation, OWNER and MSA agree and consent that such matter may be resolved through legal action in any state or federal court having jurisdiction.

17. **Exclusion of Special, Indirect, Consequential and Liquidated Damages.** Consultant shall not be liable, in contract or tort or otherwise, for any special, indirect, consequential, or liquidated damages including specifically, but without limitation, loss of profit or revenue, loss of capital, delay damages, loss of goodwill, claim of third parties, or similar damages arising out of or connected in any way to the project or this contract.

18. **State Law.** This agreement shall be construed and interpreted in accordance with the laws of the State of WISCONSIN.

19. **Jurisdiction.** OWNER hereby irrevocably submits to the jurisdiction of the state courts of the State of WISCONSIN for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement. OWNER further consents that the venue for any legal proceedings related to this Agreement shall be, at MSA's option, Sauk County, Wisconsin, or any county in which MSA has an office.

20. **Understanding.** This agreement contains the entire understanding between the parties on the subject matter hereof and no representations. Inducements, promises or agreements not embodied herein (unless agreed in writing duly executed) shall be of any force or effect, and this agreement supersedes any other prior understanding entered into between the parties on the subject matter hereto.



# Exhibit A - Scope of Services

ADA Access Audit and Transition Plan for Sauk County Park and Recreation Facilities

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## SCOPE OF SERVICES

MSA has divided the scope of services to provide Sauk County with an American with Disabilities Act Facility Audit and Transition Plan into the following phases and tasks:

### PHASE I: Park Facilities Audit/Report

#### **Task 1 - Kick-off Meeting (Meeting #1 - Teleconference)**

MSA will meet with County's ADA team to review the audit process and project schedule. The County will provide any available facility plans or layouts, Capital Improvement Plans, and any other documentation relevant to the audits for MSA to review and develop audit inventory to be reviewed in Task 2.

#### **Task 2 - Facility Review (Meeting #2 - In-Person)**

MSA will meet with County's ADA team to verify the areas and extent of the facilities included in each site audit. Prior to the meeting:

*MSA will utilize available GIS data to map building and park facility site boundaries and identify existing facilities.*

*County to provide building plans or layouts if available.*

*Review the County's ADA obligations under ADAAG including public notice, program access/compliance, and ongoing monitoring of compliance.*

#### **Task 3 - Field Inventory/Site Audits**

MSA will conduct a field inventory of the public areas for the existing Sauk County publicly accessible facilities including buildings, grounds and parks.

*MSA staff will identify accessibility deficiencies at each facility in accordance with applicable Americans with Disabilities Act Accessibility Guide (ADAAG) 2010 Standards and/or the American National Standards Institute - National Standard for Accessible and Useable Buildings and Facilities (ANSI A117.1).*

*Note: The ANSI standards are almost identical to the Americans with Disabilities Act Accessibility Guide (ADAAG). The primary difference between the two is that ADAAG is part of the overall ADA, which is federal civil rights legislation, while ANSI A117.1 is the accessibility standard adopted by the State of Wisconsin under the Wisconsin State Building Code, and it is understood that this standard achieves ADA compliance.*

*The Audits will focus on compliance with Americans with Disabilities Act Accessibility Guide (ADAAG) 2010 Standards except where American National Standards Institute - National Standard for Accessible and Useable Buildings and Facilities (ANSI A117.1) are more restrictive. The variances between ANSI and ADAAG are minimal and include such nuance as the ANSI requirement for vertical grab bars in restrooms. ANSI standard will be cited in the transition plan to make a clear distinction between ADAAG requirements and ANSI standards.*

*Review is limited to public use and access areas of the listed facilities. Review of non-public areas — such as, but not limited to — staff-only offices or storage areas are not included. This will be identified with County staff in Task 1.*

*Review of trails will be limited to trailheads (parking, kiosks, etc.) and areas identified as "pedestrian/outdoor accessible routes" under ADAAG; full analysis of the trail system can be included as an additional service.*

*MSA staff will wear MSA branded clothing and name tags to identify themselves while conducting site audits.*

## Exhibit A –Scope of Services

June 8, 2021

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*MSA will prepare an accessibility audit flyer to distribute during audits to residents and/or site users who would like more information about the audit process.*

*Audits of exterior park facilities will be collected using ESRI ArcGIS Collector and used to assist MSA in developing the Transition Plan. A Shapefile or File Geodatabase can be provided to the County at the completion of the project including a copy of the spatial data for exterior deficiencies, audit photos, listed deficiency and potential solutions.*

### **Task 4 - Accessibility Audit Reports (Report Section I)**

MSA will provide a condensed Accessibility Deficiency Summary Report (Section I of the final report) identifying:

*Summary of audit methodology.*

*Summary spreadsheet of observed deficiencies.*

MSA will also provide Site-Specific Audit Reports for each facility, including:

*Cover page of park boundary with aerial photo, highlighting audited structures.*

*Summary of each audit identifying observed deficiencies with photographs from time of audit, identification of potential corrective measures, and reference to the applicable section of ADAAG or Building Code.*

Maintenance suggestions and recommended improvement (Smart Practices) will be identified where improvements would benefit accessibility but are not specifically required by ADAAG or ANSI.

### **Task 5 - Review Audits with County Staff**

#### **(Meeting #3 - Teleconference)**

MSA will review the draft assessment findings with the County including the Site-Specific Audit Reports and Accessibility Deficiency Summary Report and discuss recommended corrective measures to prioritize for inclusion in the Transition Plan.

*High level review of Site-Specific Audit Reports and Accessibility Deficiency Summary.*

*Review summary of program access for all County facilities.*

*MSA and County staff will discuss the process of identifying phasing of recommended corrective measures to prioritize over the schedule the County identifies.*

## **PHASE II: TRANSITION PLAN**

### **Task 1 - Transition Plan (Report Section II)**

MSA, with assistance from the County, will prepare an ADA Transition Plan, including preliminary cost estimates for corrective measures recommended to occur based on the feedback from the staff.

The Transition Plan Report will include:

*Introduction/purpose statement.*

*Summary of how the County determines priorities and will monitor progress for corrective measures.*

*Summary of ADA Coordinator contact and grievance procedures. (If available, the County's existing Request for Reasonable Accommodation will be included in the appendix.)*

*Summary of Transition Plan timeline.*

*Summary spreadsheet of deficiencies by facility or park, with target year corrective measure timeline and estimated costs.*

*Example/reference drawings or sketches for common proposed accessibility mitigation actions.*

*County staff will complete identification of timeline and prioritization of corrective measures (project timeline can be extended to accommodate County's ability to complete prioritization).*

## Exhibit A –Scope of Services

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### **Task 2 – Review Draft Transition Plan with County Staff (Meeting #4 – Teleconference)**

MSA will review the Transition Plan with County staff.

*Review Transition Plan spreadsheet and cost estimates.*

*Revise and finalize Transition Plan Report.*

### **Task 3 – Public Information Meeting (Meeting #5)**

MSA will assist the County in hosting a Public Information Meeting to provide an overall summary of audit findings and to get input from stakeholders regarding the proposed transition plan timeline. The County would be responsible for advertising the meeting and outreach to specific stakeholders and/or the Aging and Disability Resource Center. It is recommended this meeting take place after the initial phasing is completed and reviewed by County Staff. However, at the direction of the County, this meeting could also be held upon completion of the audit summaries and before the development of the transition plan timeline/phasing. The meeting would be best hosted as a hybrid meeting, with an in-person component as well as a recorded video conference to allow those who may not be able to attend in person an additional opportunity to provide feedback. A comment period of approximately two weeks would follow the meeting. MSA will prepare a survey or comment forms for distribution by the County.

## **PHASE III: FINAL REPORT AND PRESENTATION**

### **Task 1 – Develop Final Report Document**

MSA will compile the Accessibility Deficiency Summary Report and Transition Plan Report into one complete final report.

MSA will:

*Revise the Transition Plan Report and spreadsheet based on feedback received during the final staff meeting.*

*Provide County staff with a digital version of the report for review.*

*Revise and finalize report based on staff feedback.*

### **Task 2 – Review Final Report with County ADA Team (Meeting #5 – Teleconference)**

MSA will meet with County staff and members of the ADA team to review the final report, make edits to the Transition Plan and discuss the final presentation.

### **Task 3 – Present Final Report to the County's ADA Team and County Board (Meeting #6 – In-Person)**

MSA will present an overview of the final report to the County Board, at a regularly scheduled County Board meeting.

### **Task 4 – Staff Training (Meeting #8 – In-Person)**

MSA will lead a two-part, half-day training session to inform staff of the requirements of ADAAG 2010. The first part of the training will include a brief overview of ADA legislation and compliance requirements and review of standards related to Park and Recreation Facilities. The second part will be a hands-on training to review procedures for assessing and documenting ADA compliance in the field. It is expected between 5 and 10 County Staff would participate in the training, which would be expected to last no more than 4 hours. This training can be scheduled at any Phase of the project to best fit the County staff's schedule.

## **MEETINGS AND DELIVERABLES**

MSA proposes the following meetings:

*Meeting 1: Kick-off Meeting (teleconference)*

*Meeting 2: Facility Review*

*Meeting 3: Review Audits with County Staff (teleconference)*

*Meeting 4: Review Draft Transition Plan with County Staff (teleconference)*

## Exhibit A –Scope of Services

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*Meeting 5: Public Input Meeting (Hybrid - In Sauk County and Virtual)*

*Meeting 6: Review Final Report and Draft Presentation with County Staff and ADA team (teleconference)*

*Meeting 7: Present to County Board (in Sauk County or via Virtual Meeting)*

*Meeting 8: Staff Training (can be held)*

MSA will provide the report in electronic format (PDF). The final Transition Plan table will be provided in Microsoft Excel format.

### **Accessibility Deficiency Summary Report and Site-Specific Audit Reports (individual park maps, accessibility audit checklists)**

Summary of audit methodology.

Summary spreadsheet of observed deficiencies.

Site-specific audit reports.

### **Transition Plan Report**

*Introduction/purpose statement.*

*Summary of how the County determines priorities and will monitor progress for corrective measures.*

*Summary of ADA Coordinator contact and grievance procedures (Request for Accommodation).*

*Summary of Transition Plan timeline.*

*Summary spreadsheet of deficiencies by facility or park, with target year corrective measure timelines and estimated costs.*

### **Appendix of Applicable References, including but not limited to:**

*Audit Informational Flyer.*

*Grievance Procedure (Request for Reasonable Accommodation) Form.*

*Contact Information for ADAAG, ANSI, and Great Lakes ADA.*

*ADAAG or ANSI Sections as required to justify specific corrective measure or policy based accommodation.*

MSA will provide electronic versions (PDF format) of all draft documents prior to each staff meeting.

### **Transition Plan Geodatabase**

*MSA will provide a geodatabase (ESRI ArcGIS) including: Audit Location, listed deficiency, potential solutions, and priority or timeline phase.*

### **WORK NOT INCLUDED**

County right-of-way areas (sidewalks and trails).

County public transit vehicles.

Review of policies, procedures, programs, communications, and website and media information.

Review of non-public areas of County facilities.

Design and construction drawings and/or specification development.

Detailed land surveying by field survey crews, professional land surveyors, etc.

Design documents, construction documents, bidding services and construction services for the needed alterations.

Review of other County parcels or facilities not expressly identified in this scope of services.

Playground safety audits.

Review of process areas.