Legend:
- Civic
- Office
- Retail/Restaurant
- Park/Soft Parking
Urban Condition

Linear Park and Landscaping

Civic Spaces
Square footages proposed in RFQ response

<table>
<thead>
<tr>
<th>Program</th>
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</thead>
<tbody>
<tr>
<td>Civic Function</td>
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<tr>
<td>Gathering</td>
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<tr>
<td>Leased Office</td>
</tr>
<tr>
<td>Office Function</td>
</tr>
<tr>
<td>Retail/Restaurant</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>
Square footages proposed in Memorandum of Understanding

Civic Space Uses:
Flex conference space that can be adapted for City Council, City Boards/Commissions, performances, and community events.

City Office Uses:
Smaller conference rooms for use by departments and citizens for meetings. Similar to Catalyst Center in Metro Chamber of Commerce.

West Ashley Coordinator and other city staff could also be placed, in addition to other government offices
BACKGROUND SQUARE FOOTAGE APPROXIMATION

City-owned
12,000 square feet of civic space (City-owned)
8,000 square feet of office space

Landmark lease
12,000 square feet of privately leased office space
18,000 square feet of privately leased retail/restaurant space (Landmark)
• Such other uses as are agreed upon by the City and Landmark.
INTENT OF MOU

To allow this process to proceed in earnest, with the aim of finalizing a Budget, Scope of Work, Schedule while also creating a mutually-acceptable Development Agreement and Ground Lease.
WHAT SHOULD HAPPEN DURING THE TERM OF THIS MOU?

Landmark agrees to proceed immediately with the initial Planning and Cost Analysis Work pursuant to the design schedule attached as Exhibit A “First Phase” and will be completed by May 1, 2022 (roughly 7 months).
<table>
<thead>
<tr>
<th>Programming and preliminary site design</th>
<th>TRC application and initial meeting</th>
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<td>Schematic design plans</td>
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<td>Design development plans to 35%-40%</td>
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<td>Massing design</td>
<td>Pricing package</td>
</tr>
<tr>
<td></td>
<td>GMP cost proposal</td>
</tr>
</tbody>
</table>
By June 30, 2022 (60 days), Landmark will present a GMP Contract for review by Council.

*Bear in mind we are also working simultaneously on the Development Agreement and Lease for presentation to Council*
WHAT HAPPENS AFTER PRESENTATION OF GMP, DEVELOPMENT AGREEMENT AND LEASE TERMS?

(i) At the end of 30 days (can be extended) if the GMP is disapproved (or deemed disapproved), or the form of the Lease and Development cannot be agreed upon and approved by City Council during the Review Period (as the same may be extended and is actually extended hereunder); OR

(iii) In the event the Ground Lease and Development Agreement are not fully executed on or before eighteen (18) months from the date of this Agreement (approx. March 14, 2023), then from and after, either party shall be entitled to terminate this Agreement upon not less than ninety (90) days prior written notice to the other party.
ELIGIBLE EXPENSES

What happens if we cannot come to an agreement?

(1) City will reimburse to Landmark incurred Eligible Expenses up to $683,500

(2) This amount cannot be increased without a vote by Council.

(3) City will owe nothing if Court determines Landmark did not act in good faith.
WHAT ARE ELIGIBLE EXPENSES?

Documented, out-of-pocket third party future expenses incurred by Landmark during Phase 1

(1) Approved in advance by the Mayor or designated Staff
(2) The City shall have 30 days to review
(3) Deemed approved if no response within 30 days
(4) No work shall commence until the City has approved expense
(5) Landmark will provide monthly reports to the City of EE incurred to date
WHAT DO WE GET FOR THOSE EXPENSES?

The results of planning and cost analysis work will be assigned to City within 15 days.

*if we come to an agreement, the EE are folded into the costs of the construction as Landmark moves forward.
**KEY TERMS OF THE LEASE AND DEVELOPMENT AGREEMENT:**

Landmark will manage the "turn-key" construction of the Project.

Project will be constructed in accordance with the final, approved plans and in direct consultation with the City’s designated project manager in a good, workmanlike and commercially reasonable manner.
KEY TERMS CONT’D.

Will obligate Landmark to complete construction of the Project within a DEFINED AND MUTUALLY AGREED UPON TIMELINE
KEY TERMS CONT’D.

Landmark responsible for all costs for design and construction of the Landmark project.

City responsible for all costs to design and construct the City project, subject to GMP (all savings remain with City).
City will provide a Ground Lease to Landmark only the portion of the Property necessary for the Landmark Project for a period of 99 years, on an absolute net basis, but with annual base rent of $10.00.
FUNDING SOURCES FOR CITY PROJECT

City will issue West Ashley TIF revenue bonds in an amount sufficient to finance (when coupled with other sources) the reasonable development costs necessary to design and construct the City project.
KEY TERMS CONT’D.

Landmark will utilize the goals of the City's Minority Business Enterprise Program.
KEY TERMS CONT’D.

Will provide for “step-in” and cure rights, together with other reasonable rights or assurances as are reasonably required by Landmark’s lender to allow for the financing of Landmark’s construction of the Project.
QUESTIONS?
MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU") is made and entered into at Charleston, South Carolina as of the ___ day of ____________, 2021, by and between the City of Charleston, a South Carolina municipal corporation (hereinafter referred to as the "City") and Landmark Enterprises Services, LLC, d/b/a Landmark Enterprises, a South Carolina limited liability company (hereinafter referred to as "Landmark"). The City and Landmark are hereinafter collectively referred to as the "Parties."

WITNESSETH

WHEREAS, the City owns fee simple title to 14 Sumar Street (the "Property"), a parcel of land within the City’s West Ashley Area, located at the intersection of Sam Rittenberg Boulevard (SC 7) and Old Towne Road (SC 171), and known generally as Charleston County TMS No. 352-08-00-006; and

WHEREAS, the City, through its “Plan West Ashley” master plan, has identified the redevelopment of the Property as a critical gateway element for both West Ashley and the City at large; and

WHEREAS, given the critical and strategic nature of the Property, the City issued a Request for Qualifications dated November 15, 2019 (RFQ #19-Q065R) (the “RFQ”), seeking an experienced, private developer, to collaborate with the City in creating and implementing a plan to redevelop the Property; and

WHEREAS, pursuant to the RFQ, the City selected Landmark as the successful applicant based on the experience, leadership team and other qualifications set forth in Landmark’s response to the RFQ dated December 31, 2019; and

WHEREAS, since Landmark’s selection, the City and Landmark have engaged in a series of discussions to refine the vision for the redevelopment of the Property into a cohesive, mixed use development in keeping with the vision set forth in Plan West Ashley and the RFQ (such redevelopment, as is finally set forth in the Development Agreement (hereafter defined), the “Project”), which at this juncture is expected to include the following fundamental elements (the “Preliminary Project Elements”):

a. Approximately 12,000 square feet of civic space;
b. Approximately 8,000 square feet of City office space (together, a and b, or such City owned development is as finally set forth in the Development Agreement, the “City Project”);
c. Approximately 12,000 square feet of privately leased office space on a portion of the land to be owned by the City and ground leased to Landmark (the “Ground Lease”); and
d. Approximately 18,000 square feet of privately leased retail/restaurant space (also subject to the Ground Lease) (together, c and d, or such Landmark owned
development as is finally set forth in the Development Agreement, the *Landmark Project*); and

e. Such other uses as are agreed upon by the City and Landmark.

WHEREAS, while City and Landmark are fully committed to the Project, there remains the need for architectural and engineering design and planning, as well as project cost and feasibility analysis in order to bring the Project from the Preliminary Project Elements to a fully planned design, to include scope of work and the delineation of rights and responsibilities between the City and Landmark for the development of the Project (the "*Planning and Cost Analysis Work*"); and

WHEREAS, the parties desire to enter into this MOU in order to set forth the framework under which Landmark, in consultation with the City, will perform the Planning and Cost Analysis Work, as necessary to establish a scope of work (to include, without limitation, delivery schedule) (the "*Scope of Work*") and budget ("*Budget*") for the final Project sufficient for the parties to finalize, execute and deliver the Ground Lease and a Development Agreement (the "*Development Agreement*") whereby Landmark will construct the Project in accordance with the Budget and Scope of Work.

NOW THEREFORE, in consideration of the above recitations and other valuable consideration, the Parties hereby agree as follows:

1. The term of this Agreement ("*Term*") shall begin on the date hereof and shall expire on the earlier of (i) the end of the Review Period (as the same may be extended and is actually extended hereunder) if the GMP is disapproved (or deemed disapproved), or the form of the Lease and Development cannot be agreed upon and approved by City Council during the Review Period (as the same may be extended and is actually extended hereunder), (ii) the date the Ground Lease and Development Agreement are fully executed and delivered or (iii) on the Outside Date (as defined herein). In the event the Ground Lease and Development Agreement are not fully executed on or before eighteen (18) months from the date of this Agreement (the "*Outside Date"), then from and after such Outside Date, either party shall be entitled to terminate this Agreement upon not less than ninety (90) days prior written notice to the other party.

2. The City agrees that, in the event the Ground Lease and Development Agreement are not fully executed prior to the expiration of the Term, the City will pay Eligible Expenses (hereafter defined) incurred by Landmark in performing the Planning and Cost Analysis Work. As used herein, the term "*Eligible Expenses*" shall mean documented, out of pocket third party future expenses incurred by Landmark for Planning and Cost Analysis Work incurred on or after the date hereof which are approved in advance by the Mayor (or such member of City Staff as is designated by the Mayor). Anything contained herein to the contrary notwithstanding, (i) in no event shall the total Eligible Expenses that are to be paid under this Agreement exceed $683,500.00 (the "*EE Cap*") (without approval via Resolution of City Council), and (ii) in the event the parties fail to enter into the Lease and Development Agreement prior to expiration of the Term, and in the event a Court of Competent Jurisdiction determines that Landmark has
breached its obligations under Section 5 below to negotiate in good faith and make commercially reasonable efforts to finalize the Planning and Cost Analysis Work and enter into the Lease and Development Agreement and any other written agreements necessary to effectuate this MOU, the City shall not be obligated to reimburse Landmark for any Eligible Expenses related to the Landmark Project. In connection with said Eligible Expenses, Landmark shall provide to the City copies of each consultant contract (collectively, the “Consultant Contracts”) which shall be entered into in connection with the Planning and Cost Analysis Work. The City shall have thirty (30) days to review each Consultant Contract and determine whether it represents Eligible Expenses. If the City shall fail to object in writing to any Consultant Contract within thirty (30) days of receipt of said Consultant Contract, the Eligible Expenses contained in such Consultant Contract shall be deemed approved by the City. The work under each Consultant Contract shall not commence until the City has approved such Consultant Contract. Thereafter, by the 20th of each month of the Term, Landmark shall provide to the City a report showing the invoiced work under the Consultant Contracts for the prior month which it has determined to be Eligible Expenses.

Landmark agrees to proceed immediately with the initial Planning and Cost Analysis Work pursuant to the design schedule attached hereto as Exhibit A, which such initial work (“First Phase”) will consist of schematic design and will be approximately thirty-five percent (35%) of the overall work needed to complete the Planning and Cost Analysis Work and will be completed by May 1, 2022. Notwithstanding anything to the contrary contained in this Agreement, Landmark shall not conduct a Phase II Environmental Site Assessment or other invasive testing on the Property unless and until (a) the need therefor is indicated by a Phase I Environmental Site Assessment conducted by Landmark or its agents, and (b) the City has given Landmark prior written consent, which consent shall be granted or withheld in the City’s sole but reasonable discretion. If the City refuses to grant its consent to the Phase II Environmental Site Assessment or other invasive testing on the Property as requested by Landmark under this paragraph, Landmark shall have the option to terminate this Agreement.

Not more than sixty (60) days after completion of the First Phase, Landmark shall present to the City a Guaranteed Maximum Price construction contract to complete the design and construction of the City Project (the “GMP”). The City shall have thirty (30) days to review and approve the GMP (the “Review Period”), provided in the event the City does not provide Landmark notice of its approval within such Review Period, then the City’s approval of the GMP shall be deemed denied. The City and Landmark shall proceed in good faith during the Review Period to agree upon the form of the Lease and Development Agreement and to obtain the approval of City Council for same. The City shall have one (1) right to extend the Review Period for an additional period in order to obtain approval of City Council by delivering written notice of such extension to Landmark.

In the event (i) the GMP is disapproved (or deemed disapproved), or (ii) the form of the Lease and Development Agreement cannot be agreed upon and approved by City Council during the Review Period (as the same may be extended), then Landmark shall promptly present the City with an itemized invoice (together with such reasonable backup documentation as the City may request) for the Eligible Expenses performed, and the City shall pay such invoice within ten (10) business days thereof, and thereafter this MOU shall be deemed terminated. Thereafter, the
City may, at the City’s option, make independent examination or audit of all of Landmark’s books, records and accounts which pertain to the Eligible Expenses, or to have same made by an accountant or certified public accountants designated by the City. Such audit shall be limited to the verification of the accuracy of Landmark’s determination of the Eligible Expenses as defined herein and shall be conducted during normal business hours and after reasonable prior notice.

3. The Development Agreement shall provide that the City will issue West Ashley TIF revenue bonds in an amount sufficient to finance (when coupled with other sources of revenue and funding) the reasonable development costs necessary to design and construct the City Project.

4. The Lease and Development Agreement will (a) obligate Landmark to manage the "turn-key" construction of the Project and to construct, or cause to be constructed, the Project in accordance with the final, approved plans and in direct consultation with the City’s designated project manager in a good, workmanlike and commercially reasonable manner; (b) obligate Landmark to complete construction of the Project no later than a defined number of months following the execution of the Development Agreement (which number of months will be set forth in the Scope of Work); (c) obligate the City to pay the documented, out-of-pocket cost to design and construct the City Project, subject to the Guaranteed Maximum Price and cost savings provisions below; (d) establish a Minority and Women’s Business Enterprise Program in order to ensure that MBE/WBEs have equal opportunity to participate in the construction of the Project; (e) obligate Landmark to utilize the goals of the City’s Minority Business Enterprise Program; (f) provide for the City to Ground Lease to Landmark the portion of the Property necessary for the Landmark Project for a period of 99 years, on an absolute net basis, but with annual base rent of $10.00; and (g) provide “step in” and cure rights, together with other reasonable rights or assurances as are reasonably required by Landmark’s lender to allow for the financing of the Landmark’s construction of the Project. The Development Agreement shall provide that all costs associated with the design and construction of the Landmark Project will be the responsibility of Landmark, and all documented, out-of-pocket costs and expenses incurred by Landmark for the design and construction of the City Project shall be the responsibility of the City, provided, however, the City’s responsibility for such costs shall be capped with a guaranteed maximum price, which guaranteed maximum price shall be agreed to in connection with the Planning and Cost Analysis Work and shall be set forth in the Development Agreement. Additionally, any cost savings below the Guaranteed Maximum Price for the City Project shall be solely allocated to the City.

Among the provisions of the Development Agreement and Lease are the following:

(a) The City’s rights shall be subject and subordinated to the lien, priority and security title of any encumbrance of any indebtedness Landmark may incur for the construction of the Project, whether by mortgage, collateral assignment or other security instrument (all or any one of which hereinafter referred to as a "Mortgage," and the owner or owners or holder or holders of all or any of which hereinafter referred to as a "Mortgagor"). The Development Agreement will be a lien against the City Project and the City’s portion of the Property to secure the City’s obligation to pay its obligations under the Development Agreement and Lease.
(b) Landmark shall have the right, without the consent of the City, to convey a security interest in Landmark's interest under the Development Agreement and Lease as security for any bona-fide indebtedness that Landmark may incur for the construction of the Project. No Mortgagee rights or remedies contained herein or provided by law for the benefit of any Mortgagee shall be binding upon the City unless and until a written notice of such Mortgage shall have first been delivered to the City, notwithstanding any other form of notice to the City, actual or constructive.

(c) The City agrees that, so long as any Mortgagee holds a Mortgage, no voluntary termination of the Agreement by Landmark and no cancellation, surrender or modification of this Agreement by Landmark will be effective without the prior written consent of each then outstanding Mortgagee. Notwithstanding the foregoing to the contrary, Mortgagee's consent shall not be required with respect to minor or ministerial modifications of the Development Agreement and Lease that do not adversely affect the rights of Landmark or the Mortgagee. Landmark will provide any Mortgagee with a copy of any modification executed pursuant to either of the two (2) preceding sentences promptly following execution by the City and Landmark.

(d) Within fifteen (15) days after receipt of written request from any Mortgagee, the City shall execute, acknowledge and deliver to such Mortgagee a written certificate certifying (i) that attached to the certificate are true and correct copies of the Development Agreement and/or Lease Agreement, (ii) to the actual knowledge of the City, the Development Agreement and/or Lease Agreement is in full force and effect (or, if not, so specifying), (iii) whether or not, to the actual knowledge of the City, a default by Landmark has occurred under the Development Agreement and/or Lease which has not been cured (and if so, specifying the same) or whether or not to the City’s actual knowledge conditions exist which but for the passage of time or the giving of notice, or both, would constitute an default by Landmark; and (iv) any other matters or state of facts regarding the Development Agreement and Lease which are reasonably requested by such Mortgagee.

5. The City and Landmark agree to negotiate in good faith and make best efforts to finalize the Planning and Cost Analysis Work and enter into the Lease and Development Agreement and any other written agreements necessary to effectuate this MOU and to facilitate advantageous financing of the City Project. Landmark acknowledges and agrees that the City cannot agree to indemnify, defend or hold harmless Landmark or any third party under any agreements related to the Project, but will nonetheless, expect normal and customary indemnities and hold harmless provisions incurring to the City's benefit. Notwithstanding the foregoing, each party agrees to be responsible for claims for injuries to persons on or damage to the Property caused by such party and its agents in the exercise of the rights granted to such party under this MOU, the Development Agreement and the Lease.

6. All notices or other communications required or permitted under this MOU shall be in writing directed to a party at its address set forth below. A party may designate a new address by written notice to the other party. All notices shall be effective and be deemed
delivered: (a) upon receipt, if by hand delivery, (b) upon transmission, if sent by facsimile or electronic transmission with confirmation of receipt, (c) upon receipt when sent by a courier or express mail service; or (d) three days after mailing when mailed postage prepaid by United States registered or certified mail, return receipt requested.

City: City of Charleston
Post Office Box 30
Charleston, SC 29402
Attention: 
Phone: 
Email: 

With a copy to:

David C. Humphreys III
Haynsworth Sinkler Boyd, PA
134 Meeting Street, 3rd floor
Charleston, SC 29401
Phone: 843.720.4431
E-mail: dhumphreys@hsblawfirm.com

Landmark: Landmark Enterprises Services, LLC
Attention: Jason Ward
311 Johnnie Dodds Blvd., Suite 221
Mount Pleasant, SC 29464
Phone: 843-884-8166
Email: jward@landmark-enterprises.com

With a copy to:

M. Jeffrey Vinzani
Graybill, Lansche & Vinzani, LLC
225 Seven Farms Drive, Suite 207
Charleston, South Carolina 29492
Phone: 843-628-7732
Email: jvinzani@glvlawfirm.com

7. Anything contained herein to the contrary notwithstanding, in the event this MOU is terminated for any reason (or in the event the Term expires) without the parties executing and delivering the Lease and Development Agreement, then, within 15 business days after City making any payment required under Section 2 above, all Planning and Cost Analysis Work, including without limitation and for avoidance of doubt, any engineering, design, architectural, permitting, and other work performed by or at the request of Landmark relating to the Property shall, at City’s election, be validly assigned from Landmark to City (and where required under the terms of any such item to be assigned, Landmark shall obtain any necessary consent to assign), it being the intention of the parties to allow City to take over such materials and
documents to allow it to use the same in further pursuit of the Project (an "Assignment"). In connection with such Assignment, Landmark shall ensure that all services rendered, all fees and all costs for labor and materials accruing prior to such Assignment have been paid in full, and said Assignment shall provide that Landmark shall indemnify, defend and hold City harmless from and against any and all claims, obligations or liabilities arising out of obligations under the documents prior to the date of the Assignment, except to the extent such costs are the express responsibility of City under this Agreement.

8. This MOU (including any attachments and any documents incorporated herein by reference) constitutes the entire understanding between the parties pertaining to the subject matter hereof and supersedes as of its date, all prior and contemporaneous agreements and understandings of the parties in connection herewith.

9. Except as specifically provided herein to the contrary, nothing herein shall waive the powers which City has under existing law or the rights of Landmark to contest such powers.

10. This MOU and the legal relationship between the parties shall be governed by and construed in accordance with the laws of the State of South Carolina.

11. This MOU may be amended only by the written agreement of the Parties hereto executed by all Parties to this MOU.

12. Landmark shall be entitled to assign its rights and obligations under this MOU to a "single purpose entity" which is an affiliate of Landmark and owned or controlled by Jason Ward. Otherwise, Landmark shall not assign this Agreement without the prior written consent of the City, which the City may withhold in its sole and absolute discretion.

***Remainder of Page Intentionally Left Blank***
IN WITNESS WHEREOF the Parties have caused their authorized representatives to execute this MOU and set their hands and seals as of the date first written above.

CITY OF CHARLESTON

By: ____________________________

Its: ____________________________

LANDMARK ENTERPRISES SERVICES,
LLC dba Landmark Enterprises

By: ____________________________

Its: AUTHORIZED SIGNATORY
EXHIBIT A

FIRST PHASE DESIGN SCHEDULE

After the issuance of a notice to proceed, a comprehensive program of preconstruction, due diligence, design, and engineering will commence. Landmark will provide the City a GMP after Phase 1. The following breaks down the timing, scope, and professional services fees associated with Phase 1. The below is based on the assumption that the overall project will include a 20,000 sf civic structure (12,000 sf office and meeting and 8,000 sf community meeting space) and 40,000 sf divided among several buildings to be used for restaurant, retail and office space.

**Phase 1:** ~Aug 2021 – April 1 2022

The services in Phase 1 include, but are not limited to:

- Programming & preliminary site design
- Additional surveying
- Geotechnical testing
- Environmental Phase 1 ESA
- Traffic Impact Analysis – TIA
- BZA parking variance process
- Site development, to include additional community engagement
- Massing design
- TRC application and initial meeting
- Color renderings
- Landscape Architecture
- Schematic Design Plans
- Design Development Plans to 35%-40%
- DRB Conceptual Approval
- Pricing package
- GMP cost proposal

Phase 1 Professional Services Fees: $683,500