



February 22, 2024

Mr. Keenan E. Smith
Dripping Springs TIRZ Project Manager
Principal
City Lights Design Alliance
PO Box 1166
Dripping Springs, TX 78620

Re: Proposal for Dripping Springs Downtown Parking --Landscape and Irrigation Design Services

Dear Keenan:

Co'design, LLC ("Landscape Architect") is pleased to present this proposal ("Proposal") to the Dripping Springs TIRZ (Tax Increment Reinvestment Zone) ("Client") for landscape architectural professional services for the downtown parking lot adjacent to the Stephenson School Building in Dripping Springs, Texas (the "Project)." This Proposal includes Terms and Conditions which are attached to, and incorporated in, this Proposal. The Proposal and the Terms and Conditions are referred to as the "Agreement."

SCOPE OF SERVICES

The landscape architectural project elements are for plantings, soils, and irrigation within the parking lot area.

I. Conceptual Landscape & Planting Plan

A. Based on approved project programming, the Landscape Architect shall prepare a conceptual landscape plan that illustrates the scale and relationship of the agreed upon project elements. Images of proposed plant material will also be included.

B The Landscape Architect shall participate in one virtual meeting with the Client to present concepts.

II. Construction Documents (CD's)

A. The Landscape Architect shall formalize documents which have been approved by Client during the Conceptual Landscape planning phase into Construction Documents that detail the Project's construction requirements. Reproducible drawings will be prepared in AutoCAD software and specifications will be provided.

B. The Landscape Architect shall coordinate with the Civil Engineer on adjacent projects including the Stephenson Building and Old Fitzhugh Rd. and provide drawings for a Site Development Permit Set that includes both the Stephenson Building drawings and parking lot drawings within a single set.

C. The Landscape Architect shall participate in three virtual meetings with the Client and any necessary stakeholders during the Construction Documents phase.

III. Bidding & Permitting

A. The Landscape Architect shall assist the Client in evaluating construction proposals as it relates to landscape architectural elements.

IV. Construction Administration

A. The Landscape Architect shall participate in two Project site visits during the construction process. The Landscape Architect shall meet with the Project's contractor to generally review the progress of construction and to see if the work completed is generally consistent with the intent of the Landscape Architect's Construction Documents.

- B. The Landscape Architect shall review required contractor submittals, such as shop drawings and samples, but only to determine if they conform to the Landscape Architect's visual and aesthetic design intent.
- C. The Landscape Architect shall participate in construction phase meetings related to landscape issues.

CLIENT RESPONSIBILITIES

- A. The Client shall support the Landscape Architect in the development of the Project drawings. The Client shall contract separately for design services relating to the Architectural, Civil, Structural, Mechanical, Electrical, and Plumbing system portions of the Project. Those services shall be performed by licensed professional consultants who shall affix their seals on the appropriate drawings, specifications and other instruments of service prepared by them. The contracts between the Client and the Client's consultants shall require the consultants to coordinate their drawings, specifications and other instruments of service with those of the Landscape Architect and to advise the Landscape Architect of any potential conflict. The Landscape Architect shall have no responsibility or liability for the components of the Project designed by the Client's consultants. Review by the Landscape Architect of the Client's consultants' drawings, specifications and other instruments of service is solely for consistency with the Landscape Architect's design concept for the Project. The Landscape Architect shall be entitled to rely on the technical sufficiency and timely delivery of drawings, specifications and other instruments of service furnished by Client's consultants and shall not be required to review or verify whether Client's consultants' documents and services are in compliance with applicable laws, statutes, building codes, ordinances, rules and regulations.
- B. The Client agrees to provide the Landscape Architect with all information, surveys, reports, and professional recommendations and any other related items requested by the Landscape Architect in order to provide its professional services. Landscape Architect may rely on the accuracy and completeness of these items. The Client agrees to provide the items described in this Paragraph B and to render decisions in a timely manner so as not to delay the orderly and sequential progress of the Landscape Architect's services.
- C. The Client agrees to advise the Landscape Architect of any known or suspected contaminants at the Project site. Client shall be solely responsible for all subsurface soil conditions.
- D. The Client shall provide the Landscape Architect with adequate information and documents relating to the Client's program. The Client shall review the Landscape Architect's drawings for compliance with the Client's program and for overall coordination with the documents prepared by the Client's other consultants.
- E. The Client shall coordinate the proposed design schedule with all consultants. The Client shall collect and coordinate data and services from Client's consultants, governing agencies, and key subcontractors. The Client shall coordinate documents and services provided by the Client's consultants and provide updates to consultants in a timely manner.

DELIVERY OF SERVICE

The Landscape Architect's services will be performed as expeditiously as is consistent with professional practice. The Landscape Architect and the Client will jointly develop a reasonable schedule with critical path deadlines and establish project status meeting dates as needed for preparation of the Project drawings. This schedule shall allow an appropriate amount of time for each phase. The Landscape Architect, however, shall not have any liability in the event of any deviations from the schedule or delays resulting from the work of other consultants. The Landscape Architect and the Client will exercise reasonable efforts to coordinate with each other and the Client's other consultants for the Project in order to avoid unreasonable delay in the orderly and sequential progress of services.

ADDITIONAL & EXCLUDED SERVICES

- 1. Additional Services beyond Landscape Architect's Basic Services outlined above (which includes the scope of landscape services subsequently agreed to in writing by the Landscape Architect and the Client) may be provided if confirmed in writing. Additional Services may include but are not limited to:
 - a. Work requested and/or authorized by the Client not defined in the Scope of Basic Services (which includes the scope of landscape services subsequently agreed to in writing by the Landscape Architect and the Client) or revisions and changes in approved drawings and the preparation of alternates requested by the Client and not in the Scope of Basic Services.
 - b. Legal descriptions of the property
 - c. Preparation of measured drawings or existing conditions.
 - d. Meetings and/or formal presentations (other than those noted in the Scope of Services) with City or County agencies or other governmental bodies, or neighborhood associates to obtain other than approval of the planning documents.

- e. Additional work performed due to lack of performance, default, insolvency, errors and/or omissions by other consultants retained by the Client and due to no fault of Landscape Architect.
- f. Work performed due to delays as a result of Client decisions or other project reasons and due to no fault of Landscape Architect.
- g. Production of camera ready artwork for marketing or advertising purposes.
- h. Computer models or other models, special illustrative renderings, promotional photography, special printing, special equipment, special printed reports or publications, maps, and documents requested by the Client.
- i. Record Drawings

2. Excluded Services are not a part of the Landscape Architect's Basic or Additional Services and are the responsibility of others. Excluded services include, but are not limited to, the following:

- a. Topography, boundary and tree surveys.
- b. Legal descriptions of property.
- c. Existing site engineering and utility base information.
- d. Soils, Geotechnical, Civil, Electrical or Mechanical Engineering Services for biofiltration features, paving surfaces, utilities, or municipal services.
- e. Structural Engineering services for design of site and/or landscape features (including but not limited to wall footings, shade structures, water features etc.),
- f. Grading & drainage drawings and specifications
- g. Landscape lighting electrical plans and details.
- h. Construction cost estimates.
- i. Stormwater Pollution Prevention Plan
- j. Arborist services & fees

3. Additional Services shall be billed at the Landscape Architect's standard hourly rates. (The standard hourly rates for the Landscape Architect are listed in the Professional Fees paragraph of this Proposal.) Landscape Architect shall also be reimbursed for expenses incurred as a result of performing the Additional Services. Approval in writing of all Additional Services will be required.

REIMBURSABLE EXPENSES

Reimbursable expenses are in addition to the Professional Fees. Reprographics (excluding internal plots and printing), courier services, travel, and other normal out-of-pocket costs directly associated with the Landscape Architect's services are considered reimbursable expenses. The Landscape Architect shall bill its standard hourly rates for all travel time, plus expenses and 58 cents per mile. (The standard hourly rates for the Landscape Architect are listed in the Professional Fees paragraph of this Proposal.) Reimbursable expenses (except courier services) will be billed at 1.05 times their cost.

PROFESSIONAL FEES

Professional fees are as outlined below for the project phases listed in the Scope of Service. Fees are on a not to exceed basis.

BASIC SERVICES (not to exceed)

1. Conceptual Landscape Plan	\$1300
2. Construction Documents & Site Development Permit Drawings	\$6800
3. Bidding, Permitting, Construction Administration (not to exceed)	\$3200
	\$11,300

The Professional Fees do not include reimbursable expenses. Invoices for professional services and reimbursable expenses shall be billed by the 25th of each month, based on percentage of services completed, and shall be paid in accordance with the Terms and Conditions.

For Additional Services provided on the Project, the Landscape Architect will charge a reasonable Professional Fee

for its services based on its standard hourly rates. The standard hourly rates for the Landscape Architect are: (i) Catherine O'Connor's standard hourly rate is \$160.00 per hour; (ii) the standard hourly rate for Design Associates is \$85.00 per hour; and (iii) the standard hourly rate for Staff Personnel is \$70.00 per hour; (iv) irrigation designer \$125.00 per hour.

ADDITIONAL PROVISIONS

The Client shall be the general administrator of the professional services for the Project, and shall facilitate the exchange of information among Client's consultants, including the Landscape Architect. Except as stated below, all written communications between the Landscape Architect and Client or Client's other consultants for the Project shall be forwarded through the Client or will include Client as a recipient of a copy of such written communications. Landscape Architect may communicate directly with Client's consultants in connection with the development of the Project drawings.

Subject to the Terms and Conditions attached to this Proposal, Landscape Architect shall provide electronic copies of drawings, reports, specifications, and other necessary information to the Client and Client's other consultants for coordination and review during the course of the Project.

We appreciate the opportunity to provide Landscape Architectural services on the Project. If there are any questions regarding the Proposal or the Terms and Conditions of this Agreement, please do not hesitate to call. Please sign and return this original Agreement, including the Terms and Conditions, and keep a copy for your file.

Sincerely,



Catherine O'Connor, Owner & Principal

ACCEPTED BY CLIENT:

BY: _____

PRINTED NAME: _____

DATE: _____

CO'DESIGN LLC
PROFESSIONAL SERVICES AGREEMENT
PART II —TERMS AND CONDITIONS

This Professional Services Agreement is made and entered into between the Dripping Springs TIRZ (Tax Increment Reinvestment Zone) ("Client") and Co'design LLC ("Landscape Architect") 1200 Yaupon Valley Road, Austin, Texas, 78746. This Agreement consists of two parts: Part I Proposal - Scope of Services and Compensation; and Part II - Terms and Conditions.

ARTICLE 1: PROFESSIONAL SERVICES

1.1 **Services.** In connection with the property described in the Proposal ("Property"), Landscape Architect shall render the professional services ("Services") for the project described in the Proposal ("Project") as outlined in the Proposal and any Amendments.

1.2 **Agreement.** The Professional Services Agreement includes the Proposal, Amendments to the Proposal, and these Terms and Conditions (collectively, the "Agreement").

ARTICLE 2: PROPOSALS

2.1 **Scope.** The Proposal(s) shall identify the specific scope of Services to be performed by Landscape Architect and those subconsultants specifically identified as having a direct contractual relationship with Landscape Architect ("Subconsultants") in the Proposal. The Proposal shall also identify the amount and type of compensation for the Services. Any services not specifically identified in the Proposal are excluded unless added as additional services with additional compensation to Landscape Architect.

2.2 **Acceptance of Agreement.** Client shall authorize and Landscape Architect shall commence work upon Landscape Architect's receipt of the properly executed and signed Proposal(s), as may be amended from time to time. If the Agreement is not executed by Client within thirty (30) days of the date tendered, it shall become invalid unless: (1) Landscape Architect extends the time in writing; or (2) at the sole option of Landscape Architect, Landscape Architect accepts Client's oral authorization to proceed with the services, in which event the terms of the oral authorization shall include all the terms of this Agreement. Landscape Architect's performance of the services under the oral authorization shall be in reliance on the inclusion of all the terms of this Agreement.

ARTICLE 3: CHANGES

3.1 **Changes.** The Landscape Architect and Client may at any time, by written amendment, make changes within the general scope of individual Proposal(s) or relating to services to be performed. If such changes cause an increase or decrease in the Landscape Architect's cost of, or time required for, performance of any services under individual Proposals, an equitable adjustment shall be made and reflected in a properly executed Amendment.

3.2 **Regulatory Changes.** In the event that there are modifications or additions to regulatory requirements relating to the services to be performed under this Agreement after the date of execution of this Agreement, the increased or decreased cost of performance of the services provided for in this Agreement and subsequent Proposals shall be reflected in an appropriate Proposal Amendment.

ARTICLE 4: THE TERM

4.1 **Term.** Landscape Architect shall be retained by Client as of the date Client executes the attached Proposal until the Services have been fully performed or until the Landscape

Architect's Services are terminated under provisions of the Agreement. Landscape Architect will pursue completion of Services in accordance with the timely completion specified in the Proposal and any amendments thereto. Landscape Architect shall not be liable or responsible for any delays caused by circumstances beyond Landscape Architect's control.

ARTICLE 5: DUTIES

5.1 **Access.** Client will provide Landscape Architect with access to the Property or to any other site as required by Landscape Architect for performance of the Services.

5.2 **Client-furnished Data.** Client shall provide all criteria and full information as to Client's requirements for the Project, designate a person to act with authority on Client's behalf in respect to all aspects of the Project, examine and respond promptly to Landscape Architect's submissions, and give prompt written notice to Landscape Architect whenever he observes or otherwise becomes aware of any defect in the work.

Client shall also do the following and pay all costs incident thereto: Furnish to Landscape Architect core borings, probings and subsurface exploration, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment and similar data; appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; landscape architectural or other engineering design documents, and any other information previously made available to the Client, which may be required by Landscape Architect, all of which Landscape Architect may rely upon in performing its Services.

Client shall provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for the Project, any auditing service required in respect of contractor(s)' applications for payment, and any inspection services to determine if contractor(s) are performing the work.

5.3 **Other Information.** Landscape Architect will rely upon commonly used sources of data, including database searches and agency contacts. Landscape Architect does not warrant the accuracy of the information obtained from those sources and has not been requested to independently verify such information.

5.4 **Ownership of Documents.** All designs, drawings, specifications, documents, and other work products of the Landscape Architect (collectively, the "Documents"), whether in hard copy or electronic form, are instruments of service for the services and are owned by the Landscape Architect regardless of whether or not services are completed. Reuse, change or alteration of the Documents by the Client or by others acting through or on behalf of the Client is not permitted without the written consent of Landscape Architect. The Landscape Architect grants to Client a nonexclusive license to reproduce the Documents solely for the purpose of constructing and maintaining the Project. Any termination of the Agreement prior to final completion of construction of the Project shall terminate this license. Upon such termination, and unless otherwise agreed by Landscape Architect in writing, the Client (and any third party who received copies of the Documents from Client) shall refrain from making further

reproductions of the Documents and shall return to the Landscape Architect within seven days of termination all originals and reproductions in the Client's possession, custody and control. ANY REUSE, CHANGE OR ALTERATION BY THE CLIENT OR THIRD PARTIES IS AT THEIR OWN RISK AND CLIENT AGREES TO HOLD HARMLESS AND INDEMNIFY THE LANDSCAPE ARCHITECT, ITS OFFICERS, PARTNERS, EMPLOYEES, AND SUBCONTRACTORS FROM ALL CLAIMS, DAMAGES, LOSSES, EXPENSES AND COSTS (INCLUDING ATTORNEYS' FEES), INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LANDSCAPE ARCHITECT'S ALLEGED NEGLIGENCE, ARISING OUT OF OR RELATED TO SUCH AUTHORIZED OR UNAUTHORIZED REUSE, CHANGE OR ALTERATION.

5.5. **Reporting Obligations.** Client has responsibility for complying with all legal reporting obligations. Nothing in the Agreement precludes Landscape Architect from providing any notices or reports that it may be required by law to give to governmental entities.

5.6 **Laboratory Services.** In performing services, Landscape Architect may request that Client provide independent testing laboratory services. Landscape Architect will rely on the accuracy of the testing laboratory services. Landscape Architect will not, and Client shall not rely upon Landscape Architect to, check the quality or accuracy of the testing laboratory's services.

5.7. **Changed Conditions.** The Client and Landscape Architect acknowledge the possibility of occurrences or discoveries that were not originally contemplated by or known to the Landscape Architect. Should Client or Landscape Architect call for contract renegotiation, they shall identify the changed conditions necessitating renegotiation and the Landscape Architect and the Client shall promptly and in good faith enter into renegotiation of this Agreement. If the terms cannot be agreed to, the parties agree that either party has the right to terminate the Agreement.

5.8 **Site Visit.** All conclusions, opinions and recommendations relating to site issues will be based upon site conditions at the Property as they existed at the time of Landscape Architect's site visit, if any. Any report should not be relied upon to represent conditions at a later date. This paragraph does not obligate Landscape Architect to visit the site.

5.9 **Opinions of Cost.** Should Landscape Architect provide any cost opinions, it is understood that those opinions are based on the experience and judgment of Landscape Architect and are merely opinions. Landscape Architect does not warrant that actual costs will not vary from those opinions because, among other things, Landscape Architect has no control over market conditions.

5.10 **Construction Observation.** If construction phase services are included in the Services, the Landscape Architect will periodically visit the Project during construction on the number of occasions indicated in the Proposal, or as Landscape Architect determines in Landscape Architect's sole opinion, to become generally familiar with the progress and quality of the contractors' work and to determine if the work is proceeding in general accordance with the Contract Documents. The Client has not retained the Landscape Architect to make detailed inspections or to provide exhaustive or continuous Project review and observation services. The Landscape Architect does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, subcontractor, supplier or any other entity furnishing materials or performing any work on the Project. Client acknowledges that Landscape Architect is not responsible

for any failure of any contractor, subcontractor, supplier or any other entity furnishing materials or performing any work on the Project to construct the Project or manufacture materials in accordance with the Documents or any applicable legal requirements. Landscape Architect shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by contractor(s) or the safety precautions and programs incident to the work of contractor(s).

5.11 **Permits.** Client is responsible for obtaining and complying with all required permits or other approvals of, and for giving any required notices to, all governmental and quasi-governmental authorities having jurisdiction over the Services or the Property. Client will provide to Landscape Architect copies of any such permits or any such notices, together with any other relevant information that will alert Landscape Architect to the requirements of such permits, approvals, or notifications.

ARTICLE 6: COMPENSATION OF SERVICES

6.1 **Compensation of Services.** Landscape Architect's compensation for services shall be set forth in individual Proposal(s).

6.2 **Compensation.** Client agrees to pay Landscape Architect for Services in accordance with the Agreement.

6.3 **Payments.** Landscape Architect will invoice Client monthly in accordance with the terms and conditions of the Proposal, and amendment(s) for Services and reimbursables. Client agrees to pay Landscape Architect the full amount of each such invoice within 30 days from Client's receipt of each invoice. In no event shall Landscape Architect's failure to bill monthly constitute default under the terms and conditions of this Agreement.

6.4 **Right to Stop Performance.** If Client does not pay any amount due to Landscape Architect within forty five (45) days after the invoice date, Landscape Architect may, upon three (3) additional days verbal or written notice to Client, stop performance of the Services until payment of the amount owed has been received.

6.5 **Interest.** Payments due and unpaid to Landscape Architect under the Agreement shall bear interest at the rate of six percent (6%) per annum, or lesser if required by law, calculated from thirty (30) days after the date of the invoice, if the payment is not made within forty five (45) days of the date of the invoice.

6.6 **Attorney's Fees.** In the event Landscape Architect's invoices for Services are given to any attorney for collection, or if suit is brought for collection, or if they are collected through probate, bankruptcy, or other judicial proceeding, then Client shall pay Landscape Architect all cost of collection, including the maximum attorney's fees allowed by law and court costs, in addition to other amounts due.

ARTICLE 7: TERMINATION OF SERVICES

7.1 **Termination.** This Agreement may be terminated, either by Client or by Landscape Architect, without cause, at any time prior to completion of Landscape Architect's services, upon seven (7) days written notice to the other at the address of record. Upon receipt of written notice from Client to discontinue work, the Landscape Architect shall discontinue work under this Agreement. Such termination shall release Landscape Architect from any further obligation to provide Services to Client on this Agreement, but all obligations of Client shall continue. In the event Client

terminates the Agreement based on Client's reasonable opinion the Landscape Architect has failed or refused to prosecute the work efficiently, promptly or with diligence, the Landscape Architect shall have at least ten (10) days, from the receipt of written notification by Client, to cure such failure to perform in accordance with the terms of this Agreement or Proposal(s).

Client waives any and all claims it has against Landscape Architect arising out of termination of this Agreement by Landscape Architect. Client waives any and all claims, causes of action, or damages that it has or may have against Landscape Architect for failure to perform further services under this or any other Agreement with Client.

7.2 **Compensation in Event of Termination.** Upon termination by either Client or Landscape Architect, Client shall pay Landscape Architect with respect to all contracted Services rendered and expenses incurred before termination an amount fixed by applying the Landscape Architect's standard hourly rates, in force at the time of termination, to all Services performed to date, in addition to termination settlement costs the Landscape Architect reasonably incurs relating to commitments which had become firm before the termination.

ARTICLE 8: RELATIONSHIP OF PARTIES

8.1 **Independent Contractor.** It is understood that the relationship of Landscape Architect to Client shall be that of an independent contractor. Neither Landscape Architect nor employees of Landscape Architect shall be deemed to be employees of Client.

ARTICLE 9: LIMITATIONS OF LIABILITY

9.1 **Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF LANDSCAPE ARCHITECT, ITS EMPLOYEES, OFFICERS, SUBCONSULTANTS AND SUBCONTRACTORS, TO CLIENT OR ANY PARTY CLAIMING BY, THROUGH OR UNDER CLIENT, FOR ANY AND ALL INJURIES, CLAIMS, LOSSES, EXPENSES, OR DAMAGES WHATSOEVER FROM ANY CAUSE OR CAUSES, INCLUDING, BUT NOT LIMITED TO, STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR ERRORS OR OMISSIONS SHALL NOT EXCEED THE LANDSCAPE ARCHITECT'S TOTAL FEE. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES INCURRED DUE TO THE FAULT OF THE OTHER PARTY, REGARDLESS OF THE NATURE OF THIS FAULT OR WHETHER IT WAS COMMITTED BY THE CLIENT OR BY LANDSCAPE ARCHITECT, THEIR EMPLOYEES, AGENTS, SUBCONSULTANTS, OR SUBCONTRACTORS. CONSEQUENTIAL DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF USE AND LOSS OF PROFIT.

9.2 **No Certification.** Landscape Architect shall not be required to sign any documents, no matter by whom requested, that would result in Landscape Architect having to certify, guarantee, or warrant the existence of conditions whose existence Landscape Architect cannot ascertain. The Client also agrees not to make resolution of any dispute with Landscape Architect or payments of any amount due to Landscape Architect in any way contingent upon Landscape Architect's signing any such certification.

9.3 **Asbestos or Hazardous Materials.** It is acknowledged by both parties that Landscape Architect's scope of services does

not include any services related to asbestos or hazardous or toxic materials. In the event Landscape Architect or any other party encounters asbestos or hazardous or toxic materials at the Property, or should it become known in any way that such materials may be present at the Property or any adjacent areas that may affect the performance of Landscape Architect's Services, Landscape Architect may, at its option and without liability for consequential or other damages, suspend performance of Services on the Project until the Client retains appropriate specialist consultant(s) or contractor(s) to identify, abate, and/or remove the asbestos or hazardous or toxic materials and warrant that the Property is in full compliance with applicable laws and regulations.

9.4 **Delays.** Landscape Architect is not responsible for delays caused by factors beyond Landscape Architect's reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the Client to furnish timely information or approve or disapprove of Landscape Architect's Services or work product promptly, or delays caused by faulty performance by the Client or by contractors of any level. When such delays beyond Landscape Architect's reasonable control occur, the Client agrees Landscape Architect is not responsible for damages, nor shall Landscape Architect be deemed to be in default of this Agreement. In the event such delay exceeds ninety (90) days, Landscape Architect shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation. In the event Landscape Architect is delayed by the Client and such delay exceeds thirty (30) days, Landscape Architect shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation.

9.5 **Project Enhancement.** If, due to Landscape Architect's error or omission, any required item or component of the Project is omitted from Landscape Architect's documents, Landscape Architect shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the Project or otherwise adds value or betterment to the Project. In no event will Landscape Architect be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the Project.

ARTICLE 10: MISCELLANEOUS

10.1 **Entire Agreement.** The Agreement contains the entire agreement between Landscape Architect and Client, and no oral statements or prior written matter shall be of any force or effect. The Agreement may be modified only by written document executed by both parties.

10.2 **Modifications.** No one has authority to make variations in, or additions to, the terms of this Agreement on behalf of Landscape Architect other than one of its officers, and then only in writing signed by him or her.

10.3 **Governing Law.** Landscape Architect and Client agree that the services will be performed partially or entirely in Travis County, Texas and the venue of any action under the Agreement shall be exclusively in Travis County, Texas.

10.4 **Venue.** Venue of any action under the Agreement shall be in accordance with the laws of the State of Texas.

10.5 **Severability.** If any provision of the Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and the Agreement shall be construed and enforced as if such illegal, invalid or unenforceable

provision is not a party hereof, and the remaining provisions shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision, there shall be added automatically as a part of the Agreement, a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

10.6 **Construction of Agreements.** The parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised the Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Agreement or any amendments or exhibits.

10.7 **Successor and Assigns; No Third Part Beneficiaries.** Client, for himself and partners, if any, and Landscape Architect, for itself, each binds himself or itself and its successors, executors, administrators and assigns to the other party to this Agreement and to partners, successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement. Neither Client nor Landscape Architect shall assign, sublet, or transfer his interest in this Agreement without the written consent of the other. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than Client and Landscape Architect. Client and Landscape Architect agree that there are no third party beneficiaries to this Agreement. Client’s representative signing below warrants that he or she has full authority to bind Client to this Agreement

Nothing in the Agreement restricts Landscape Architect’s ability to hire subconsultants or others in connection with the Services. Notwithstanding anything to the contrary in this Agreement, Landscape Architect shall have no obligation to hire any subconsultants unless the services of subconsultants are specifically included in the Proposal. The Services and any reports or other documents prepared under this Agreement are for the sole benefit and sole use of Client and are not for the use of any other person. Only Client may rely upon the Agreement and the Services, unless the Landscape Architect gives Client prior and specific written approval.

10.8 **Dispute Resolution.** Any claim, dispute or other matter in question arising out of or related to the Agreement or the Services provided thereunder shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve all disputes by mediation. Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Agreement and with the American Arbitration Association. No arbitration arising out of or relating to the Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement. The foregoing agreement to arbitration shall be specifically enforceable in accordance with applicable law in any court having jurisdiction.

Landscape Architect:

Co’design LLC
Name: Catherine O’Connor
Title: Owner, Principal
Date: February 22, 2024

The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

10.9 **Mediation.** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to non-binding mediation as a condition precedent to the institution of legal proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Landscape Architect’s services, the Landscape Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or other legal proceedings. Each party agrees to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include similar mediation provisions in all agreements with their respective subcontractors, suppliers, and Subconsultants, thereby providing for mediation as the initial method for dispute resolution between the parties to all those agreements.

The parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in Travis County, Texas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

10.10 **No Warranty.** Landscape Architect makes no warranty, either expressed or implied, as to Landscape Architect’s findings, recommendations, Documents, or professional advice. Any warranties or guarantees contained in any purchase orders, contracts, certifications, requisitions, or notices to proceed issued by the Client are specifically objected to and excluded. Client recognizes that neither Landscape Architect nor any of Landscape Architect’s Subconsultants or subcontractors owes any fiduciary responsibility or duty to Client.

10.11 **Corporate Liability.** Client understands and agrees that Landscape Architect is a business entity that has contracted to perform services, and any services provided by Landscape Architect’s employees, agents or officers are not provided in their individual capacity. Client will not make any claim or demand against any of Landscape Architect’s employees, agents or officers in their individual capacity.

10.12 **Survival of Provisions.** Termination of the Services for any reason whatsoever shall not affect (a) any right or obligation of any party that is accrued or vested prior to such termination, and any provision of the Agreement relating to any such right or obligation shall be deemed to survive the termination of the Services or (b) any continuing obligation, liability or responsibility of Landscape Architect and of Client which would otherwise survive termination of the Services.

10.13 The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as landscape architects in Texas. Mailing Address: TBAE, PO Box 12337 Austin, TX 78701,(512) 305-9000.

Client:

Name: _____
Title: _____
Date: _____
Address: _____