

PROFESSIONAL SERVICES AGREEMENT

AMENDMENT NO. 5

THIS AGREEMENT made and entered into this, the 7th day of September 2021, and between the City of Dripping Springs, Texas (hereinafter referred to as the “City”) and Keenan E. Smith, AIA, dba: City Lights Design Alliance, (hereinafter referred to as “Consultant”), is understood and agreed to be as set forth herein:

1. Description of Services:

Project Management, Staff Support, and Coordination Services for TIRZ #1 & #2- “Project Management” Selected Projects. Consultant shall assist the Client by providing the described services for Project Management, Staff Support and Coordination Services for the Selected Projects proposed for TIRZ #1 & #2, Dripping Springs, TX 78620.

All services will be provided and performed at the Client’s sole direction. Professional Fees will be invoiced per the Compensation Schedule, not to exceed budgeted caps without prior authorization.

Project Management / Staff Support & Coordination Services***

- A) **Project Management-** TIRZ #1 & #2: (***)for selected projects- tasks may vary)
 - (1) Project Team(s): (Administer RFQ’s; coordinate Team vetting & selection process; manage Team organization)
 - (2) Project Tasks, Studies & Plans: (Administer RFP’s; coordinate proposal & award process; oversee tasks, studies & plans; ensure schedules & budgets; direct deliverable products, cost estimates, reports, etc.)
- B) **Liaison & Staff Support-** to TIRZ Entities, Partners & Stakeholders
 - (1) TIRZ #1 & #2 Board of Directors (Staff Support; Board Meetings)
 - (2) City of Dripping Springs (Liaison; Representation)
 - (3) Hays County (Liaison; Representation)
 - (4) Dripping Springs Community Library (Liaison; Representation)
 - (5) Dripping Springs Independent School District (Liaison; Representation)
 - (6) TIRZ Land Owners & Developers (Liaison; Representation)
- C) **Coordination Services-** with TIRZ Team(s)
 - (1) TIRZ Administrator
 - (2) TIRZ Financial Advisor
 - (3) TIRZ of Counsel

2. Payment for Services:

The City will compensate Consultant at the rate of \$95 an hour for Project Coordination & Liaison Fees, on a Budgeted Average of 42 hrs./mo., with a capped annual amount of \$47,880/yr. Additional services or fees may be agreed to in writing by both parties. Payment terms: Net due on receipt of monthly invoice.

3. Schedule:

Begin Services	October 1, 2021 or upon contract execution
End Services	September 30, 2022 (end of Fiscal Year)
Renewal Option	Annually or as mutually agreed – rates to be negotiated

4. Conditions and Termination:

Fees and Expenses are estimates strictly for the scope of work outlined. Any Addenda to Scope of Work, if approved and directed by Client, are subject to billing at standard hourly fee schedule (above).

Either party may terminate this agreement at any time upon thirty (30) days written notice.

5. Exclusions:

Provision of construction documents; surveying, structural, electrical, civil, geotechnical or mechanical engineering services.

6. Limitations:

To the fullest extent permitted by law, the Consultant’s total liability to the Client for any and all injuries, claims, losses, expenses damages or claim expenses arising out of the Consultant’s performance under this agreement, other than what is insurable by Consultant’s insurance policies, shall not exceed the amount of the total fees paid to the Consultant. Such causes include, but not limited to, the Consultant’s negligence, errors, omissions, strict liability, breach of contract or breach of warranty. The Consultant’s liability does not extend to construction and design activities performed by third parties related to this Agreement.

7. Indemnification:

The Client shall, to the fullest extent permitted by law, indemnify and hold harmless the Consultant from any and all damages, liability and cost, including reasonable attorney’s fees and defense costs, arising out of or in any way connected with the performance of any party connected with the design and construction of the above-named Project, excepting only those damages, liabilities or costs attributable to the sole negligence or willful misconduct of the Consultant. Consultant agrees to indemnify and hold City harmless from all claims, losses, expenses, fees, including attorney’s fees, costs, and judgments that may be asserted against City that result from acts or omissions of Consultant, Consultant’s employees, if any, and Consultant’s agents subject to the limitations listed in Section 6.

8. Relationship of Parties:

It is understood by the parties that Consultant is an independent contractor with respect to the City and not an employee of the City. City will not provide fringe benefits, including health insurance benefits, paid vacation, or any employee benefit, for the benefit of Consultant. The City may contract with other individuals or firms for project management services.

9. Conflicts of Interest:

During the period the Consultant is covered by this agreement, the Consultant will contact the City and TIRZ Board in writing if a potential conflict of interest with a third-party client may exist. If the TIRZ Board or the City Council finds that a project for a third-party client of the Consultant has a direct conflict with the TIRZs, the TIRZ Board or the City Council shall contact the Consultant in writing. If the conflict of interest cannot be resolved to either party's satisfaction, either the Consultant or the City Council may terminate this Agreement with seven (7) days' notice to the other party.

10. Injuries/Insurance:

Consultant acknowledges his obligation to obtain appropriate insurance coverage for the benefit of Consultant's employees, if any. Consultant waives the rights to recovery from City for any injuries that Consultant and/or Consultant's employees may sustain while performing services under this Agreement. Consultant is to provide a copy of insurance coverage to City at least ten (10) days prior to end of any existing coverage period if Consultant uses the services of any of Consultant's employees for the provision of services to the City.

11. Assignment:

Consultant's obligation under this Agreement may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of City.

12. Notice:

All notice required or permitted under this Agreement shall be in writing and shall be delivered either in person or deposited in the United States mail, postage prepaid, addressed as follows:

For the City:

City of Dripping Springs
Attn: City Administrator
PO Box 384
Dripping Springs, TX 78620
(512) 858-4725

For the Contractor:

City Lights Design Alliance
Attn: Keenan Smith, AIA
PO Box 1166
Dripping Springs, TX 78620
(512) 659-5062

13. Entire Agreement:

This Agreement contains the entire Agreement of the parties and there are no other promises or conditions in any other Agreement whether oral or written. This Agreement supersedes and prior written agreements between the parties.

14. Amendment:

This agreement may be modified or amended only if the amendment is made in writing and is signed by both parties.

15. Severability:

If any provision of this Agreement shall be held to be invalid or unenforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

16. Waiver of Contractual Right:

The failure of any party to enforce any provision of this Agreement shall not be construed as a waiver of that party's right to subsequently enforce and compel strict compliance with every provision of the Agreement.

17. Applicable Law:

The laws of the State of Texas shall govern this Agreement.

18. Venue:

The venue for any and all legal disputes arising under this Agreement shall be Hays County, Texas.

CITY OF DRIPPING SPRINGS:

CITY LIGHTS DESIGN ALLIANCE:

Bill Foulds, Jr., Mayor

Keenan Smith, AIA

Date

Date

ATTEST:

Andrea Cunningham, City Secretary