

Professional Services Agreement
Between RVi and Client

Part II - Terms and Conditions

ARTICLE 1: THE TERM

- 1.1 Term. Consultant shall be retained by Client as of the date Client executes the Agreement until the Services are terminated under provisions of the Contract. Consultant will pursue completion of Services in accordance with the timely completion specified in the Agreement and any amendments thereto. Consultant shall not be liable or responsible for any delays or hindrances caused by circumstances beyond Consultant's control or that are concurrent with delays or hindrances caused by circumstances beyond Consultant's control.

ARTICLE 2: CHANGES

- 2.1 Changes. The Consultant and the Client may make changes to the Contract at any time, but only by written amendment signed by both parties, or by Client's oral request confirmed by Consultant in writing (or email) indicating its acceptance. If such changes cause an increase or decrease in the Consultants' cost of, or time required for, performance of any services, Consultant shall be entitled to an equitable adjustment in compensation and/or completion time.
- 2.2 Regulatory Changes. In the event that there are modifications or additions to regulatory requirements relating to the services to be performed under the Contract after the date of execution of the Contract, the increased or decreased cost of performance of the services provided for in the Contract and subsequent Proposals shall be reflected in an appropriate written amendment to the Contract.

ARTICLE 3: RESPONSIBILITIES OF THE PARTIES

- 3.1 Access. Client will provide Consultant with access to the Project site or to any other site as required by Consultant for performance of the Services.
- 3.2 Client shall designate a person to act with authority on Client's behalf in respect to all aspects of the Project, examine and respond promptly to Consultant's submissions, and give prompt written notice to Consultant whenever he observes or otherwise becomes aware of any defect in the work.
- 3.3 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) is/are performing the work.
- 3.4 Reporting Obligations. Client has responsibility for complying with all legal reporting obligations. Nothing in the Contract precludes Consultant from providing any notices or reports that it may be required by law to give to governmental entities.

- 3.5 Changed Conditions. Consultant shall have the authority to determine the continued adequacy of the Contract in light of conditions first discovered or information first provided to Consultant after the execution of the Contract. Should Consultant determine that the Contract is no longer adequate in light of such conditions, the Consultant shall identify the changed conditions necessitating renegotiation and the Consultant and the Client shall promptly and in good faith enter into renegotiation of the Contract. If the terms cannot be agreed to, the parties agree that either party has the right to terminate the Contract.
- 3.6 Construction Management. If the Client chooses to retain a Construction Manager ("CM") for the Project, the Client shall provide to the Consultant, in writing, a list of duties, responsibilities and authority ("DR&A list") the CM has been assigned by the Client. The Consultant shall be entitled to rely upon the proper performance by the CM of the items on the DR&A list and shall bear no responsibility to the Client or its representative(s) for any opinions, directions or decisions given by the Client and CM that are in conflict with the DR&A. In the event the Client makes any changes to the CM's DR&A list, the Client shall notify the Consultant, in writing, in a timely manner. The Consultant shall be entitled to rely solely upon the CM's decisions and directions as to all items listed in the DR&A list. If any owner-directed changes to the CM's DR&A list result in additional time or expense in order for the Consultant to prepare, coordinate or respond to changes to the plans or specifications, the Consultant shall be entitled to an equitable adjustment in fees and schedule for the performance of these additional services.
- 3.7 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 Project. Before Consultant performs the Services, Client will provide Consultant evidence satisfactory to Consultant that all required permits or other approvals have been obtained and that all required notices have been given. Client will provide to Consultant copies of any such permits or any such notices, together with any other relevant information that will alert Consultant to the requirements of such permits, approvals, or notifications.
- 3.8 Other Information. Consultant may rely upon commonly used sources of data including database searches and agency contacts. Consultant does not warrant the accuracy of the information obtained from those sources and has not been requested to independently verify such information.
- 3.9 Site Visits.
1. Site visits conducted pursuant to a Professional Services Agreement for Landscape Architectural Design Services shall be subject to the following terms and conditions. Unless otherwise specifically set forth in a fully executed written Amendment to the Contract, the Consultant's site visits are on an as-requested basis for the purpose of observation and responding to inquiries by the Client regarding whether specifically identified portions of the landscape work are being constructed in general conformance with the Landscape Construction

Documents. Consultant may also visit the site periodically to determine whether the completed construction of portions of the landscape work is in general conformance with the aesthetic intent of the Landscape Construction Documents. However, Client has not retained the Consultant to make inspections or to provide periodic, continuous or exhaustive Project review and observation services. Consultant's site visits do not include any obligation to identify or notify Client of any jobsite safety issues. If Client desires more extensive visits, such services are available as Additional Services upon the execution of a written amendment to the Contract. All observations, including the Final Observation, and recommendations made by Consultant in connection with site visits are based upon site conditions at the Project as they exist at the time of Consultant's site visit, and as are discernible through visual observation. Consultant is not obligated to conduct any tests in connection with site visits. Client shall not rely on such responses as representing conditions at any other time of the visit.

2. Site visits conducted pursuant to a Professional Services Agreement for Land Planning Services shall be subject to the following terms and conditions. Unless otherwise specifically set forth in a fully executed written Amendment to the Contract, the Consultant's site visits are for the sole purpose of collecting information relevant to, and for the benefit of, the performance of Consultant's services. Client has not retained Consultant to observe or inspect any construction work, or to identify or notify Client of any jobsite safety issues. All services provided by Consultant in reliance upon information collected through site visits are based upon site conditions at the Project as they exist at the time of Consultant's site visit, and as are discernible through visual observation. Consultant is not obligated to conduct any tests in connection with site visits.
- 3.10 Construction Exclusion. Consultant's scope of work does not include, and Consultant shall have no authority for supervising, directing or controlling any contractor's work, nor shall Consultant have any responsibility for the means, methods, techniques, sequences, safety measures, or procedures of construction selected by any contractor or subcontractor. Consultant does not warrant or guarantee that the work of any contractor, subcontractor or supplier is provided in a safe manner or in accordance with any contract documents, drawings, specifications, or applicable laws, rules, regulations, ordinances, codes or orders. Accordingly, Consultant 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 agrees that the general contractor shall be solely responsible for jobsite safety.
- 3.11 No Warranty; Waiver of Claims. Consultant and Client acknowledge and agree that the services provided by Consultant are in the nature of professional services, the essence of which are the provision of advice, judgment, opinion and professional skill. Consultant and Client further acknowledge and agree that—anything to the contrary which may be contained in the Contract or any future correspondence, communication, proposal, amendment, purchase order, certification, requisition, notice or Instrument of

Service notwithstanding—Consultant makes no warranties, express or implied, regarding the services provided in connection with the Project, and Client hereby expressly waives all claims for breach of warranty against Consultant in connection with the Project. Client further acknowledges and understands that accessibility standards, guidelines and requirements are subject to varying interpretations, and as such, Client hereby expressly waives all claims, causes of action, liabilities and damages arising out of or in any way related to non-compliance with any and all accessibility standards, guidelines and requirements, including, without limitation, those promulgated through, by or under the Americans with Disabilities Act (“ADA”), the Fair Housing Act (“FHA”), and any of their state counterparts.

- 3.12 Cost Estimates. Cost estimating services are provided solely under a Professional Services Agreement for Landscape Architectural Design Services, and shall be subject to the following terms and conditions. Client and Consultant agree that Consultant’s construction cost estimates are for the purpose of providing Client and Consultant with information for use in revising the Instruments of Service, and that Consultant makes no warranty, express or implied, that its construction cost estimates will not differ from bids received from contractors or the negotiated cost of the work. Client understands that Consultant’s construction cost estimates are based on Consultant’s professional judgment and that Consultant has no control over the price or availability of labor, equipment, materials, or any other element of the work that that may affect the negotiated cost of the work or bids received from contractors. If the fixed limit of construction cost is exceeded by the lowest bona fide bid or negotiated proposal by more than 20%, the Consultant will at the Client’s request, revise the Contract Documents to comply with the project budget at no additional charge. In any event, Consultant’s modification of Instruments of Service shall be its sole responsibility and Client’s sole remedy for any difference between Consultant’s construction cost estimates and bids received or the negotiated cost of the work.

ARTICLE 4: TERMINATION

- 4.1 This Contract may be terminated by either party, at any time prior to completion of Consultant’s services, upon not less than seven days’ written notice, should the other party fail substantially to perform in accordance with the terms of the Contract through no fault of the party initiating the termination; provided however, that such notice shall state the reason(s) for termination, and such termination shall not be effective if the party to whom the notice is directed, within such seven-day period, fully cures its failure to perform.
- 4.2 If the Client fails to make payments to the Consultant in accordance with the Contract, such failure shall be considered failure to substantially perform and cause for termination or, at the Consultant’s option and upon not less than seven days’ written notice, cause for suspension of performance of services without terminating the Contract. In the event of a suspension of services, the Consultant shall have no liability

to the Client for delay, hindrance or damage caused the Client because of such suspension of services. The Consultant shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Consultant's services before having to resume services.

- 4.3 If the Project is suspended for more than 90 consecutive days, the Consultant shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Consultant shall be compensated for expenses incurred in the interruption and resumption of the Consultant's services. The Consultant's fees for the remaining services and the time schedules shall be equitably adjusted.
- 4.4 If the Project is suspended or the Consultant's services are suspended for more than 90 consecutive days, the Consultant may terminate the Contract by giving not less than seven days' written notice.
- 4.5 This Contract may be terminated by either party, without cause and for its convenience, at any time prior to completion of Consultant's services, upon not less than seven days' written notice to the other party. In the event that a termination by Consultant for cause is later determined to have been wrongful, then the termination shall be deemed a termination for convenience.
- 4.6 In the event of termination not the fault of the Consultant, the Client shall, within fifteen days following the termination, pay Consultant for all services performed prior to termination, together with reimbursable and sub-consultant expenses incurred before termination and all Termination Expenses. Termination Expenses are in addition to compensation for the services of the Contract and include expenses directly attributable to termination for which the Consultant is not otherwise compensated, ~~plus an amount for the Consultant's anticipated profit on the value of the services not performed by the Consultant. Client waives any and all claims, causes of action and damages that it has or may have against Consultant arising out of termination not the fault of the Consultant, including termination without cause.~~

ARTICLE 5: RELATIONSHIP OF PARTIES

- 5.1 Independent Contractor. It is understood that the relationship of Consultant to Client shall be that of an independent contractor. Neither Consultant nor employees of Consultant shall be deemed to be employees of Client.
- 5.2 No Fiduciary Duty. Client recognizes that neither Consultant nor any of Consultant's subconsultants or subcontractors owes any fiduciary responsibility to Client.
- 5.3 Corporate Services. Client agrees that Consultant has entered the Contract in its corporate capacity, and that all services are provided by Consultant in its corporate capacity. Client agrees that it shall look solely to Consultant in its corporate capacity and not to any of Consultant's directors, officers, partners or employees in any individual capacity with respect to obtaining any remedy.

ARTICLE 6: LIMITATIONS OF LIABILITY

- 6.1 Limitation of Liability. Client and Consultant have considered the relative risks and benefits of the Project to both Client and Consultant, and agree to allocate risks such that, to the fullest extent permitted by the law, the total liability of the parties, their directors, officers, partners, employees, subconsultants and subcontractors (the "Limited Parties"), to each other for any and all injuries, claims, losses, expenses (including attorney's fees and costs), or damages of any nature whatsoever, shall be limited such that the total aggregate liability of the Limited Parties shall not exceed the Consultant's total compensation received for services rendered and reimbursable expenses incurred in connection with the Project. This limitation shall apply to any and all liabilities and causes of action, however alleged or arising and regardless of the nature of the fault, unless otherwise prohibited by law. To the extent that any portion of this limitation is prohibited by law, such prohibited portion shall be deemed excluded from this provision, and the remainder shall remain in effect.
- 6.2 Waiver of Special Damages. Notwithstanding any other provision of this Contract, Client and Consultant agree that neither party, nor their respective directors, officers, partners, employees, subconsultants or subcontractors, shall in any event be liable to the other for any punitive, special, incidental, or consequential damages, including, without limitation, damages incurred for principal office expenses, finance expenses, lost business opportunity, loss of use, loss of business reputation, and regulatory penalties, fines or assessments, arising out of or relating to the Contract or the Project, the same being hereby expressly waived by both parties. This waiver shall apply to any and all causes of action, however alleged or arising and regardless of the nature of the fault or the or whether it was committed by the Client or by Consultant or their respective directors, officers, partners, employees, subconsultants and subcontractors.
- 6.3 No Certification. Consultant shall not be required to sign any documents, no matter by who requested, that include a certification by Consultant of the existence of conditions whose existence Consultant cannot ascertain, and shall not be required to sign any document, no matter by who requested, that include any warranty or guarantee. ~~The Client also agrees not to make resolution of any dispute with Consultant or payments of any amount due to Consultant in any way contingent upon Consultant's signing any such certification.~~
- 6.4 Delays. Consultant is not responsible for delays or hindrances caused by factors beyond Consultant's reasonable control, including but not limited to delays and hindrances resulting from 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 Consultant's Services or work product or respond to Consultant's inquiries promptly, or delays caused by faulty performance by the Client or by contractors of any level. When such delays beyond Consultant's reasonable control occurs, the Client agrees Consultant is not responsible for damages, nor shall Consultant be deemed to be in default of the

Contract. In the event any delay or hindrance exceeds ninety (90) days, Consultant shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation. In the event Consultant is delayed by the Client and such delay exceeds thirty (30) days, Consultant shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation.

- 6.5 Project Enhancement. If, due to Consultant's error or omission, any required item or component of the Project is omitted from Consultant's documents, Consultant 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 Consultant be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the Project.

ARTICLE 7: MISCELLANEOUS

~~7.1 Lien Rights. Client grants to Consultant a contractual lien, in addition to all constitutional, statutory and equitable liens that may exist, on the real property identified in the Agreement as the Project location, and on all improvements thereon, to secure payment for all debts owed, now or in the future, to Consultant by Client, arising from services provided and reimbursable expenses and sub-consultant costs incurred by Consultant in connection with the Project. Client grants Consultant the authority and right to file a copy of the Contract in the Deed Records of the county or counties where the Project is located to give notice of Consultant's lien rights. If Client is not an owner of the real property or improvements at the Project location, then Client hereby assigns to Consultant, to the extent of Consultant's services on the Project, Client's lien rights under the relevant state law, including without limitation, Chapter 53 of the Texas Property Code.~~

7.2 Instruments of Service.

1. All designs, drawings, specifications, documents, calculations, and other work products, whether in hard copy or electronic form, prepared by the Consultant are Instruments of Service, and such Instruments of Service, as well as the concepts, designs, and ideas expressed in the Instruments of Service are for use solely with respect to the Project. The Consultant is deemed the author and owner of the Instruments of Service, regardless of whether or not services are completed, and Consultant shall retain all common law, statutory and other reserved rights, including copyrights.
2. Upon execution of a Professional Services Agreement for Landscape Architectural Design Services, and when the Consultant has been paid in full for services rendered, then the Consultant grants to the Client a non-exclusive license to reproduce and utilize the Consultant's Instruments of Service: (i) to complete the construction of the Project; (ii) for reference in operating, maintaining and repairing the Project; and (iii) for reference in undertaking any

future alteration, improvement, addition or renovation of the Project. Upon execution of a Professional Services Agreement for Land Planning Services, and when the Consultant has been paid in full for services rendered, then the Consultant grants to the Client a non-exclusive license to reproduce and utilize the Consultant's Instruments of Service to complete the development of the Project. In the event that the Client does not pay the Consultant in full for services rendered under this Agreement, then the Consultant will not grant the Client license to reproduce and utilize the Consultant's Instruments of Services for any purpose.

3. Reuse, change or alteration of Instruments of Service by the Client or by others acting through or on behalf of the Client is not permitted without the written consent of Consultant. ANY SUCH REUSE, CHANGE OR ALTERATION BY THE CLIENT OR THIRD PARTIES IS AT THEIR OWN RISK ~~AND CLIENT AGREES TO HOLD HARMLESS AND INDEMNIFY THE CONSULTANT, ITS OFFICERS, PARTNERS, EMPLOYEES, AND SUBCONSULTANTS FROM ALL CLAIMS, DAMAGES, LOSSES, EXPENSES AND COSTS (INCLUDING ATTORNEYS' FEES), INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR CONSULTANT'S ALLEGED NEGLIGENCE, ARISING OUT OF OR RELATED TO SUCH AUTHORIZED OR UNAUTHORIZED REUSE, CHANGE OR ALTERATION.~~

- 7.3 Attorney's Fees. In the event Consultants' invoices for Services are given to any attorney for collections, or if suit is brought for collection, or if they are collected through probate, bankruptcy, or other judicial proceeding, then Client shall pay Consultant all cost of collection, including the maximum attorney's fees allowed by law and court costs, in addition to other amounts due.
- 7.4 Governing Law. The Contract shall be governed by and construed in accordance with the laws of the State of Texas.
- 7.5 Venue. Consultant and Client agree that the services will be performed or partially performed in *Kendall County, Texas*, and the venue of any action under the Contract shall be exclusively in *Kendall County, Texas*.
- 7.6 Severability. If any provision of the Contract is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and the Contract shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part 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 Contract, a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
- 7.7 Construction of Contracts. The parties acknowledge that each party and, if it so chooses, its counsel have reviewed and revised the Contract 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 Contract or any amendments or exhibits.

- 7.8 Successor and Assigns. Neither Client nor Consultant shall assign, sublet, or transfer this interest in the Contract without the written consent of the other. Client's representative signing Contract warrants that he or she has full authority to bind Client to the Contract. ~~Client's representative signing below agrees to indemnify, save, and hold Consultant harmless for any and all claims, causes of action, and damages that may arise against Consultant if the representations contained in the Paragraph are not correct.~~ Nothing in this provision restricts Consultant's ability to hire subcontractor in connection with the services to be provided.
- 7.9 Dispute Resolution. All claims, disputes or other matters in question arising out of or related to the Contract or the services provided thereunder ("Disputes") shall be resolved in accordance with the dispute resolution procedures set forth herein. Specifically, unless both parties agree to waive the requirement in writing, all Disputes shall be subject to non-binding mediation as a condition precedent to any other legal proceedings by either party.
1. Mediation. The Client and Consultant shall endeavor to resolve all Disputes between them by mediation. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the county where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlements agreements in any court having jurisdiction thereof. ~~If a Dispute relates to or is the subject of a lien arising out of the Consultant's services, the Consultant 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.~~
 2. ~~Arbitration. All claims, disputes and other matters in question arising out of or related to the Contract or the services provided thereunder 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 Contract and with the American Arbitration Association. No arbitration arising out of or relating to the Contract shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to the Contract. The foregoing agreement to arbitration shall be specifically enforceable in accordance with applicable law in any court having jurisdiction. 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~~
- 7.10 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 Contract 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 Consultant and of Client which would otherwise survive termination of the Services.

END OF PART II