

INTRODUCED BY: Trustees Slama, Fortune, Graves, Whitmore and Eisenhauer

AN ORDINANCE APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE VILLAGE OF TWIN OAKS AND MARY DEWEESE D/B/A ACORN LANDSCAPES.


BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF TWIN OAKS, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

Section 1. The Board of Trustees hereby approves, and the Chairman is hereby authorized to execute, a contract on behalf of the Village of Twin Oaks with Mary Deweese d/b/a Acorn Landscapes ("Consultant"), for Base plan preparation, plant inventories, landscape maintenance planning, site planning, concept design, design development, general landscape consulting, specifications, details, detailed planting plans, meetings, coordination, punch lists, site visits, site analysis, schematic design, cost opinions, presentations, educational seminars, bid administration, construction observation, project management and related services as more fully set forth in the agreement. The agreement shall be in substantially the form of the contract marked "Exhibit 1" attached hereto and incorporated herein and made a part of this Ordinance as if set forth in fully herein.

Section 2. Pursuant to Section 208.009 R.S.Mo., the Consultant shall provide affirmative proof that the Applicant for the Consultant is a citizen or a permanent resident of the United States or is lawfully present in the United States. The applicant for the Consultant shall be the person authorized to prepare, submit and sign contract documents on behalf of the Consultant, and shall be eighteen years of age or older. Such affirmative proof shall include documentary evidence recognized by the Missouri Department of Revenue when processing an application for a driver's license, a Missouri driver's license, as well as any document issued by the federal government that confirms an alien's lawful presence in the United States.

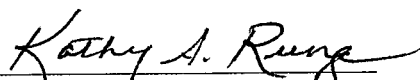
Section 3. This ordinance having been read by title or in full two times prior to passage, shall be in full force and effect from and after its passage and after being duly signed by the Chairman of the Board of Trustees and attested by the Village Clerk.

PASSED and APPROVED this 17th day of February, 2016.



Ray Slama, Chairman
Board of Trustees

ATTEST:



Kathy A. Runge
Village Clerk/Controller

First Reading: 2-17-16

Second Reading: 2-17-16

Exhibit 1

Landscape Architect Services Agreement



LANDSCAPES

13 forrester drive
ballwin mo 63011
phone:636.394.0255

Agreement Between client and Landscape Architect

This Agreement, effective as of February 2, 2016 is between the Village of Twin Oaks 1393 Big Bend Rd, Ste F. Twin Oaks Missouri 63021, and Landscape Architect, Acorn Landscapes, 13 Forrester Dr, Ballwin, MO 63011. for the following Project: Landscape Architectural Consulting.

Article 1 Landscape Architect's Basic and Additional Services

Landscape Architect agrees to provide Client the following Basic Services as needed:

Base plan preparation, plant inventories, landscape maintenance planning, site planning, concept design, design development, general landscape consulting, specifications, details, detailed planting plans, meetings, coordination, punch lists, site visits, site analysis, schematic design, cost opinions, presentations, educational seminars, bid administration, construction observation, project management.

Basic Services Fee Total – Hourly Rate

\$105.00/hour

- B. Excluded Services: installation services, subsurface conditions, soil issues and testing (including suitability for plant material, soil content, level of compaction), lot line location, drainage or grading, utilities' location, surveys, permits, security, lighting layout, insurance requirements, bidding requirements, project budget, maintenance after completion, zoning, engineering or architectural services, subcontracting of services, irrigation design or construction administration.
- C. Landscape Architect agrees to provide its professional services in accordance with generally accepted standards of its profession.

Article 2 Client's Responsibilities

- A. Client agrees to provide Landscape Architect with all information, surveys, reports, and professional recommendations requested by Landscape Architect to provide its professional services. Landscape Architect may reasonably rely on the accuracy and completeness of these Items.
- B. Client shall be solely responsible for all subsurface soil conditions unless otherwise agreed to in writing.
- C. Client will obtain and pay for all necessary permits from authorities having jurisdiction over the project.
- D. Client agrees to provide the items described in Article 2.A and to render decisions in a timely manner so as not to delay the orderly and sequential progress of Landscape Architect's services.

Article 3 Estimated Schedule and Project Budget

- A. Landscape Architect shall render its services as expeditiously as is consistent with professional skill and care. During the course of the Project, anticipated and unanticipated events may impact and Project schedule. Client acknowledges that significant changes to the Project schedule, budget or the Project's scope may require Additional Services of Landscape Architect.

Article 4 Compensation and Payments

- A. Client agrees to pay Landscape Architect as follows:
 - 1. Basic Services at an hourly rate of \$105.00
- B. Reimbursable Type Expenses outside of the basic services, including oversized reproductions, and materials will be billed to Client at actual cost.
- C. Landscape Architect shall bill Client for Basic and Additional Services and Reimbursable Expenses as Follows: in monthly payments for the work completed. All payments are due Landscape Architect immediately as described above. A service charge of 1.5% per month will be charged on all amounts due more than 60 after the date of invoice.

Article 5 Termination

- A. Either Client or Landscape Architect may terminate this Agreement upon seven (7) days written notice.
- B. If terminated, Client agrees to pay Landscape Architect for all Basic and additional Services rendered and Reimbursable Expenses incurred up to the date of termination.
- C. Landscape Architect may suspend performance of its services if, within seven days after Landscape Architect makes written demand for payment, Client fails to pay Landscape architect in full for services rendered or expenses incurred. Client's failure to pay within said time period shall constitute a breach of this contract so that Landscape Architect shall have no liability because of such suspension of services or termination due to non payment.

Article 6 Dispute Resolution

- A. Client and Landscape Architect agree to mediate claims or disputes arising out of or relating to this Agreement before initiating litigation. The mediation shall be conducted by a mediation service acceptable to the parties. A party shall make a demand for mediation within a reasonable time after a claim or dispute arises, and the parties agree to mediate in good faith. In no event shall any demand for mediation be made after such claim or dispute would be barred by applicable law. Mediation fees shall be shared equally

Article 7 Ownership of Documents

- A. All instruments of professional service prepared by Landscape Architect, including, but not limited to, drawings and specifications, are the property of Landscape Architect, and these documents shall not be reused on other projects without Landscape Architect's written permission. Landscape Architect retains all rights, including the copyright in its documents.
- B. Landscape Architect reserves the right to include representations of the Project in its promotional and professional material.

Article 8 Governing Law

- A. This Agreement is governed by the law of the state in which the Project is located.

Article 9 Entire Agreement and Severability

- A. This Agreement is the entire and integrated agreement between Client and Landscape Architect and supersedes all prior negotiations, statements or agreements, either written or oral. This agreement may be amended only by written instruments signed by both Client and Landscape Architect.
- B. In the event that any term or provision of this agreement is found to be void, invalid, or unenforceable for any reason, that term or provision shall be deemed to be stricken from this agreement, and the balance of this agreement shall survive and remain enforceable.

Article 10 No Assignment

- A. Neither party can assign this Agreement without the other party's written permission.

Article 11 Indemnification

- A. Client agrees to indemnify, defend and hold Landscape Architect harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including but not limited to, reasonable attorneys' fees and all legal expenses and fees incurred on appeal, and all interest thereon, accruing or resulting to any and all persons, firms or any other legal entities on account of any damages or losses to property or persons, including injury or death, or economic losses, arising out of the Project and/or the performance or non-performance of obligations under this Agreement, except to the extent such damages or losses are found by a court or forum of competent jurisdiction to be caused by Landscape Architect's negligent acts.

Article 12 Attorneys' Fees

- A. Should any legal proceeding be commenced between the parties to this Agreement seeking to enforce any of its provisions, including, but not limited to, fee provisions, the predominantly prevailing party in such proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorney's and expert witnesses' fees, which shall be determined by the court or forum in such a proceeding or in a separate action brought for that purpose. For purposes of this provision, "prevailing party" shall include a party which dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.

Article 13 Waivers of Claims to Consequential or Punitive Damages and Subrogation

- A. Client and Landscape Architect waive all claims to consequential or punitive damages for any claims or disputes arising out of or relating to this agreement and all work done or part of this agreement.
- B. In addition, Client and Landscape Architect waive all claims against each other to the extent covered by any applicable insurance during design or construction, including but not limited to claims for subrogation.

Article 14 Client's Responsibility for Maintenance

- A. Client acknowledges and agrees that the landscape architect is not responsible for providing Project maintenance required after the Project is complete (Project maintenance includes but is not limited to: mulching, watering, pruning, repairing of hardscape, maintenance of irrigation spray patterns, weeding, cleaning, deadheading, replacing of damaged plants and hardscaping when damaged, patching, sealing, and all other maintenance) A lack of or improper maintenance may result in damage to property or persons. Client further acknowledges that, as between the parties to this Agreement, Landscape architect is not responsible for the results of any lack of or improper maintenance.

Article 15 No Third Party Beneficiaries

- A. Nothing in this agreement is intended to create a contractual relationship for the benefit of any third party. There are no intended beneficiaries of this agreement except Landscape Architect and Client.

Article 16 Miscellaneous Provisions

- A. Irrespective of any other term in this Agreement, Landscape Architect shall not control or be responsible for construction means, methods, techniques, schedules, sequences or procedures; or for construction safety or any other related programs; or for another parties' errors or omissions or for another parties' failure to complete their work or services in accordance with Landscape Architect's documents.
- B. The Landscape Architect is not responsible if anticipated LEED credits or other environmental certification are not in fact, attained by project / client.
- C. In the event that any term or provision of this Agreement is found to be unenforceable or invalid for any reason, the remainder of this Agreement shall continue in full force and effect, and the parties agree that any unenforceable or invalid term or provision shall be amended to the minimum extent required to make such term or provision enforceable and valid.
- D. Cost Opinions - As the Landscape Architect, Acorn Landscapes, has no control over construction costs or Contractor's prices, any construction cost opinions are made on the basis of Acorn Landscapes experience and judgment as a design professional; but it cannot and does not warrant or guarantee that Contractor's proposals, bids or costs will not vary from its estimates.

Article 17 Expiration of Proposal

- A. If this agreement is not accepted within 120 days, the offer to perform the described services is withdrawn and shall be null and void.

Acorn Landscapes

Signature Mary P. Owens

Title owner

Dated February 2, 2016

Client:

Signature _____

Title _____

Dated _____