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# MEMO

APPROVED  
2/26/2024



DATE: February 20, 2024  
FROM: Matney M. Ellis  
Procurement Director  
TO: Board of County Commissioners  
SUBJECT: Agreement – LandPlan Consultants, Inc.

A handwritten signature in black ink, appearing to read "Matney M. Ellis", with a long horizontal flourish extending to the right.

At the Board of County Commission meeting of January 29, 2024, the recommendation to accept the qualifications from LandPlan Consultants, Inc. for the Chandler Park Nature Trail Improvements was approved, CMF #20240151.

Submitted for your approval and execution is the attached agreement between the Board of County Commissioners of the County of Tulsa, Oklahoma, and LandPlan Consultants, Inc. to provide Professional Design Services associated with the above-mentioned project at an estimated cost of \$1,072,159 in AARPA funds (\$1,000,000) and Trees For All funds (\$72,159), as further described in the attached.

Respectfully submitted for your execution and approval.

MME / dcc

SUBMITTED FOR: The February 26, 2024 BOCC meeting agenda.

CMF# 20240304

AGREEMENT  
FOR  
PROFESSIONAL LANDSCAPE ARCHITECTURAL DESIGN SERVICES

This Agreement (“Agreement”) is made effective February 26<sup>th</sup>, 2024 between the

“Client”

Tulsa County Parks, 218 W. 6<sup>th</sup> Street, 7<sup>th</sup> Floor, Tulsa, OK 74119

and the “Design Professional”

LandPlan Consultants, Inc., 1110 West 23<sup>rd</sup> Street, Tulsa, OK 74107

And concerns the Design Professional’s services as set forth below with respect to the following Project:

Chandler Park Improvements

The following attachments are incorporated by reference as part of this Agreement:

- Exhibit A-Scope of Project
- Exhibit B-Scope of Professional Design Services
- Exhibit C-Client Responsibilities
- Exhibit D-Compensation

**Duration:** This Agreement shall remain in effect until December 30<sup>th</sup>, 2026, unless terminated as provided herein or extended by mutual agreement memorialized in writing by both parties.

**Standard of Care:** Design Professional’s services are intended to be performed consistent with the industry accepted standard of care applicable to such services, *i.e.*, the professional skill and care ordinarily provided by Design Professionals practicing in the same or similar locality under the same or similar circumstances. Client accepts that Design Professional makes no warranty or guarantee unless otherwise expressly provided in a separate written document..

**Warranties and Guarantees:** Design Professional represents that it is properly licensed to perform the services under this Agreement. No other expressed or implied warranties or guarantees are created related to this Agreement or the professional services to be provided.

**Limitations of Responsibility:** Design Professional shall not at any time supervise, direct, or have control over any contractor’s work, nor shall Design Professional have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor or subcontractor. Design Professional likewise shall not be responsible for quality of, enforcement of or approval of work performed by any contractor, subcontractor, Owner, third party vendor, independent contractor or any agent, servant, or employee of any General Contractor, subcontractor, Owner, third party vendor or independent contractor.

CME# 20240304

**Opinions of Cost and Schedule:** Evaluations of the Client’s budget for the Project, the preliminary estimate of the Cost of the Work, and any updated estimates of the Cost of the Work prepared by the Design Professional represent the Design Professional’s judgment as a Design Professional familiar with the construction industry. It is recognized, however, that neither the Design Professional nor the Client has control over the cost of labor, materials, or equipment, over the Contractor’s methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Design Professional does not warrant or represent that bids or negotiated prices will not vary from the Client’s budget for the Project, or from any estimate of the cost prepared or agreed to by the Design Professional.

**Waiver:** To the fullest extent permitted by law, Client and Design Professional (1) waive against each other, and the other’s employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Design Professional’s total liability to Client under this Agreement shall be limited to \$\_\_\_\_\_ or the total amount of compensation received by Design Professional, whichever is greater.

Client and Design Professional agree that the applicable Oklahoma state law will govern the time limits for bringing all claims arising out of this Agreement. Client and Design Professional further agree that for purposes of calculating the applicable statutes of limitations and repose in any claim arising out of this Agreement or the services Design Professional provides pursuant to the Agreement shall be deemed to have accrued no later than the issuance of Design Professional’s final invoice for services under the contract, and the applicable statutes of limitations or repose will begin to run upon issuance of Design Professional’s final invoice.

**Compliance with Laws:** Design Professional shall obtain all professional licenses, permits and approvals required for the Design Professional to legally provide the services required under this Agreement and shall assist the Client in securing those licenses, permits and approvals customarily required for the completion of the Project.

**Insurance:** During the performance of the Professional Design Services under this Agreement, Design Professional shall maintain the following insurance during the time it performs Design Services on the Project:

Professional Liability Insurance with limits of no less than \$1,000,000 per occurrence and not less than \$1,000,000 in the aggregate.

General Liability Insurance with bodily injury limits of not less than \$1,000,000 for each occurrence and not less than \$1,000,000 in the aggregate, and with property damage limits of not less than \$100,000 for each occurrence and not less than \$100,000 in the aggregate.

Automobile Liability Insurance with bodily injury limits of not less than \$1,000,000 for each person and not less than \$1,000,000 for each accident and with property damage limits of not

less than \$100,000 for each accident.

Worker's Compensation Insurance in accordance with statutory requirements and Employers' Liability Insurance with limits of not less than \$100,000 for each occurrence.

Design Professional shall furnish Client certificates of insurance if requested.

**Ownership and Reuse of Documents:** Instruments of Service are drawings, specifications, models, etc., including those in electronic form, prepared by the Design Professional with respect to this Project. Upon execution of this Agreement, Design Professional grants to Client a nonexclusive license to use Design Professional's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that Client substantially performs its obligations, including prompt payment of all sums when due, under this Agreement.

To the extent Client allows unauthorized use of the Instruments of Service, Client assumes full responsibility for any unauthorized use of Design Professional's Instruments of Service.

**Termination of Agreement:** In the event of a material failure to perform, this Agreement may be terminated by either party by provision of seven (7) days' written notice. If terminated by Design Professional for Client's material failure to perform, which includes but is not limited to failure to pay for work performed within ninety (90) days of receipt of an invoice, Client shall pay Design Professional for work completed up to the date of termination.

Client contact information: Matney Ellis, Tulsa County Procurement Director, 918-596-5022;

[Matney.ellis@tulsacounty.org](mailto:Matney.ellis@tulsacounty.org)

Design Professional contact information: Julie Graff, LandPlan, 918-746-1306, [j.graff@lpci.com](mailto:j.graff@lpci.com)

Design Professional may terminate this Agreement for convenience if Client cancels, abandons or suspends the Project or for any other business reason. In the event of such termination, Client shall pay Design Professional for the work completed up to the date of termination.

Client shall have the right to terminate this Agreement for convenience.

In the event of termination for Client's convenience, Client shall pay Design Professional for all Design Services performed up through the date of termination.

If mutually agreed, Client may suspend Design Professional's performance under this Agreement. Upon restart of a suspended Project, payment for restart shall be negotiated and made to Design Professional.

If the Project is suspended or terminated for any reason outside the exclusive control of Design Professional, Design Professional shall have no liability to Client or any other Party for any associated delay or damage caused to Client or others because of such suspension of services.

**Uncontrollable Forces:** Neither Client nor Design Professional shall be considered to be in default of this Agreement if delays in or failure of performance are due to forces beyond the control of the parties including, but not limited to: fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage; inability to procure permits, licenses, or authorizations from any state, local, or federal agency or person for any of the supplies, materials, accesses, or services required to be provided by either Client or Design Professional under this Agreement; strikes, work slowdowns or other labor disturbances, and judicial restraint.

**Severability:** If any portion of this Agreement is construed by a court of competent jurisdiction as unenforceable, such portion shall be severed herefrom, and the balance of this Agreement shall remain in full force and effect.

**Integration and Modification:** This Agreement includes Exhibits A, B, C, D and represents the entire and integrated Agreement between the Parties; and supersedes all prior negotiations, representations, or agreements, either written or oral. Only a written instrument signed by each of the Parties may amend this Agreement.

**Dispute Resolution Procedure:** In the event of a dispute between Design Professional and the Client over the interpretation or application of the terms of this Agreement, the Client's and Design Professional's management shall discuss the matter thoroughly in an effort to amicably resolve the dispute. In the event that informal discussions do not resolve the dispute, both parties to the Agreement agree to participate in non-binding mediation facilitated by a mediator who is knowledgeable of the construction industry, with each party to pay their own respective fees and expenses and one-half of the mediator's fee.

Only if informal discussions and informal mediation fail can a party to this Agreement initiate litigation in the District Court of Tulsa County, State of Oklahoma.

**Assignment:** Design Professional shall not assign its obligations undertaken pursuant to this Agreement, provided that nothing contained in this paragraph shall prevent Design Professional from employing such independent consultants, associates and design professionals as Design Professional may deem appropriate to assist Design Professional in the performance of the Professional Design Services hereunder.

EXECUTED

Client

*Stan Sallee*

2/26/2024

Date

Printed Name: Stan Sallee

Title: Chairman

Board of County Commissioners of the County  
of Tulsa, OK on behalf of Tulsa County Parks

Attest: *Michael Willis*

Michael Willis, County Clerk



APPROVED AS TO FORM

*Andrew Higginbotham*

Andrew Higginbotham  
Assistant District Attorney  
Tulsa County - Civil Division

Design Professional

*Julie Graff*

Julie Graff, President  
LandPlan Consultants, Inc.

2/16/2024

Date

## EXHIBIT A

### SCOPE OF PROJECT

The following scope of Design Services for the Project is itemized in accordance with the respective phase(s) of the Project. Upon confirmation of notice from the Client to proceed with the Initial Phase, Design Professional shall commence performance of design services identified in that Phase. Services detailed under subsequent phases shall commence only upon completion of the previous phase or as directed to proceed from the Client.

- A. The Design Professional agrees to perform professional services associated with the Project including design of a paved ADA accessible nature trail that will be approximately 0.75 miles in length. It will include multiple ADA accessible picnic areas, electrical, lighting, and ADA accessible interpretive signage. Current construction funding for the project is approximately \$1,072,159 and is a combination of AARPA funds (\$1 million) and Trees For All funds (\$72,159). If the estimated cost for the trail and lighting allow for additional park amenities to be added, LPCI will design additional amenities up to the current funding amount. These amenities may include a trail bridge south of the restroom, event stage, or an overlook near the west end of the park. These items will be designed if they appear to be within the established construction budget.
- B. Design services shall include construction documents that meet local and national code and shall conform with all requirements of the American with Disabilities Act. Progress sets with cost estimates will be provided at 30%, 60%, and Final Design.
- C. Design Professional shall prepare all construction documents, bid documents, and permit documents necessary for the County to solicit bids for the construction of the trails and other supporting structures/amenities in accordance with the provisions of the Public Competitive Bidding Act of 1974, Oklahoma Statutes, Title 61 § 101 et seq. Documents required by the Architect include, but are not necessarily limited to:
  - Bid documents;
  - Complete specifications; will utilize ODOT specifications for everything possible and provide a project manual per EJCDC 2013 and Tulsa County bid document format
  - Complete drawings in both CAD and PDF formats; and
  - Construction documents (such as Requests for Information (RFI), Requests for Clarification, Substitution Requests, Change Orders, Directives, Test Reports, Meeting Minutes, Addenda, and other correspondence).
- D. Attend and participate in meetings associated with the solicitation for construction of the trail and other amenities within the \$1,072,159 construction budget.
- E. Attend pre-bid meeting, provide bid review, tabulation, and recommendation for construction of the renovated trails.
- F. Provide contractor/project oversight for construction of the renovated trails and other

supporting amenities and to include, but not be limited to, submittal review and approvals, construction site observation, response to Requests for Information or Clarification, review of proposals, providing recommendations for modifications, on-site quality assurance observation to verify adherence to Construction Documents, review of payment applications, final inspection, and project closeout documentation.



## EXHIBIT B

### SCOPE OF PROFESSIONAL DESIGN SERVICES

Design Professional's Services shall be limited to those expressly set forth in Exhibit A. Design Professional shall have no other obligations or responsibilities for the Design Services except as agreed to in writing. All of Design Professional's actions and communications relative to the Design Services shall be subject to this Agreement.

**Additional Services:** Additional Services will be subject to review and authorization by both Parties prior to the start of additional services. Where Design Professional believes additional services are appropriate, it shall notify Client. Authorization is required.

**Construction Services Contingency:** Should the contractor fail to complete the Project in the contracted construction period (as identified herein and in the bid documents of the Project), Design Professional shall provide continuing construction services. The services to be provided shall be identical in nature to the Professional Design Services identified in previous sections of this detailed Scope of Services and shall be paid by the Client as additional Design Professional Services to compensate Design Professional for all duties performed.

## EXHIBIT C

### **RESPONSIBILITIES OF THE CLIENT - The Client agrees:**

Design Professional is entitled to rely on information supplied by the Client and other consultants retained directly by the Client. Design Professional has no obligation to check the accuracy or completeness of Client-supplied information, but will bring to the Client's attention any discovered discrepancies.

**Reports, Records, Information, Etc.:** To furnish, as required by design services, and at no expense to the Design Professional:

- Records, reports, studies, plans, drawings, digital engineering plans in ACAD format and other data available in the files of the Client that may be useful in design services involved under this Agreement.
- Standard drawings and standard specifications.
- Other plat maps showing property lines, utilities, etc.

**Access:** To provide access to property when required in performance of Design Professional's services.

**Staff Assistance:** Designate in writing a person to act as its representative in respect to design services to be performed under this Agreement, and such person shall have complete authority to transmit instructions, receive information, interpret, and define Client's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered by this Agreement.

Furnish technical and/or legal assistance as required in the preparation, review and approval of construction documents, if needed.

**Review:** Examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by Design Professional and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of Design Professional.

**Bid Advertisement:** Advertise the Project to bid as required.

## EXHIBIT D

### COMPENSATION

**Project Fee:** Work tasks iterated in Exhibit A will be provided for a total fee of **\$117,458**. Billing will be monthly based on the percentage of work completed during the billing cycle. Design Professional shall not exceed the total fee shown above without written authorization by the Client. The total fee includes normal reimbursable expenses which are defined as costs of reproduction and mileage.

**Invoicing and Payments:** Design Professional shall issue monthly invoices for services provided and reimbursable costs incurred. Client's payment shall be due within thirty (30) days of the invoice date. Client shall promptly review Design Professional's invoice upon receipt and shall notify Design Professional of any dispute of any portion of such invoice within 30 days of the invoice date.

Any dispute identified thereafter shall not be a basis for withholding any payment except as agreed by the Parties or as determined by audit or other investigation at the end of the Project. In the event that Client disputes any portion of an invoice, Client shall pay all undisputed portions of such invoice as required by this Agreement. Client shall not withhold any payment or portion thereof as an offset to any current or prospective claim related to the Project or any other contracted-for Project. Client may withhold payment as to those specific services that Client claims were improperly performed.

If Client fails to make payments to Design Professional as set forth above, such failure shall be cause for termination or, at the Design Professional's option, cause for suspension of performance of services under this Agreement. Before resuming services, the Design Professional shall be paid all sums due prior to suspension and any expenses incurred in the resumption of Design Professional's services. The Design Professional's fees for the remaining services and the time schedules shall be equitably adjusted.