



PROFESSIONAL SERVICES AGREEMENT – DESIGN

RVi# 18003242

This Professional Services Agreement (the “Agreement”) is made and entered into between the City of Deer Park, 710 E. San Augustine, Deer Park, TX 77536 (“Client”) and RVI Planning + Landscape Architecture, Inc. (“Consultant”), 19 Briar Hollow Lane, Suite 145, Houston, Texas, 77027.

The Client agrees to engage Consultant to provide professional landscape architectural design services as set forth below for the North East Hike and Bike Trail located along E. 13th Channel from Park Green Park to Running Brook Park (“Project”).

ARTICLE 1: PROJECT PARAMETERS AND SCOPE OF WORK

- 1.1 Project Understanding: Assist the Client with the development of a hike and bike trail along the E. 13th Channel in order to connect existing neighborhoods and parks. The project will be designed, permitted and constructed as a single phase. Limit of Work can be found on the attached Exhibit A.
- 1.2 The trail is proposed to travel through a series of properties owned by the City of Deer Park that span from Park Green Park south to Running Brook Park. The trail will connect four neighborhood parks including Park Green Park, Wynfield Park, Tiffany Manor Park, and Running Brook Park. The trail will extend into Wynfield Park and Running Brook Park. There is existing irrigation in Wynfield Park.
- 1.3 The City was awarded a \$200,000 Recreational Trails Grant from the Texas Parks & Wildlife Department (TPWD) and has \$170,000 in additional funding from the Deer Park Parks, Recreation and Open Space Master Plan funding to help fund the construction of the hike and bike trail. The total budget is approximately \$370,000.
- 1.4 The Project must adhere to TPWD Recreational Trails Program Grant guidelines.
- 1.5 The City shall be responsible for obtaining any and all resource surveys including but not limited to a cultural resources review and protected species survey.
- 1.6 The agreement is further contingent upon the following assumptions:
 1. Public meetings are not included in the scope of services in this agreement;
 2. The Client will be responsible for all TPWD grant requirements including but not limited to all submittals and reports;
 3. It is assumed that subdivision platting is not required.
- 1.7 The known relevant governmental authorities (“RGA’s”) having jurisdiction over the Project are: City of Deer Park and Texas Parks and Wildlife Department.

ARTICLE 2: BASIC SERVICES

The Consultant shall provide, for the Basic Fee plus reimbursable expenses, services described in the following phases.

2.1 SCHEMATIC DESIGN SERVICES

1. Based on the project parameters provided, discussions with and direction of the Client, Consultant will prepare schematic design studies for the landscape components, as described below.
 - a. The schematic design may include initial plan, section and elevation drawings, illustrating the general scope, scale and relationship of the landscape architectural components.
 - b. The following site and landscape improvements will be considered in the Schematic Design:
 - Preservation of existing trees, drainage ways and other features to be left undisturbed;
 - Grading and drainage;
 - Special paving materials for pedestrians;
 - Pedestrian circulation;

- Trailheads;
 - Furnishings selection;
2. Prepare an opinion of probable cost for the construction based on the approved schematic landscape design and other selections made by Client.
 3. Review Schematic Design Drawings and opinion of probable construction cost with the Client for approval and authorization to proceed. Design presentations and iterations are limited to one (1). Meetings or presentations beyond those described will be billed as an additional service.

DELIVERABLES

Schematic landscape package in 24x36 PDF and digital format.

2.2 CONSTRUCTION DOCUMENT SERVICES

1. Based on the Client approved schematic design drawings, prepare construction documents for the landscape components. Initiation of the construction documents will rely on the complete survey base data provided by the client and shall include:
 - a. Typical detail drawings, that set forth in the requirements for construction of the landscape components, including depiction of their size, shape, dimensions, and locations; and
 - b. Specifications that identify the materials, equipment, workmanship and quality standards (or performance criteria), for landscape components.
2. Prepare an opinion of probable cost based on the Construction Documents.
3. Review the construction documents and opinion of probable cost with the Client for their approval and authorization to proceed.

DELIVERABLES

Construction Documents in 24x36 format and digitally (example: list number, size, scale and type if available)

Landscape Specifications in CSI Masterspec Format

2.5 REGULATORY SERVICES

1. The following required permits are in effect on the date of this Agreement:
 - a. City of Deer Park construction permit
2. Upon approval and authorization to proceed, prepare documents reasonably required for review by RGAs to comply with permitting requirements.
3. As requested by Client participate, in the permitting process including:
 - a. Evaluate and respond to RGA review and comments;
 - b. Review with the Client, modifications requested by RGAs, and at Client's direction, modify the documents accordingly for re-submission.

2.6 BIDDING

1. If requested, the Consultant, following the Client's approval of the Construction Documents, will assist the Client in obtaining bids and in awarding contracts for construction for the Project.
2. The services that may be provided in this phase include:
 - a. Provide bid advertisement for publication;
 - b. Attending pre-bid conference;
 - c. Assisting the Client in qualifying bidders;
 - d. Issuing bidding documents;
 - e. Preparing addenda to the Construction Documents;
 - f. Attending bid opening;
 - g. Evaluating bids;
 - h. Assistance in preparing a Construction Contract Agreement between Client and contractor;

- i. Distributing required sets of Contract Documents.

2.7 CONSTRUCTION OBSERVATION PHASE SERVICES

1. Consultant shall, as part of the Basic Services, visit the site at Client's request to observe particular portions of the landscape work identified by the Client and to answer questions from the Client as to whether those identified portions are, in general being performed in accordance with the Construction Documents. Consultant may also visit the site periodically to determine whether the completed construction portions of the landscape work is in general conformance with the aesthetic intent of the Construction Documents. The Consultant will not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the work. The total number of all such Client-requested, and periodic, visits included in the Basic Services is four (4).
2. Perform the following services as they relate to landscape components:
 - a. Attend pre-construction conference (1 visit)
 - b. Respond to Requests for Information;
 - c. Review and process shop drawings, product data and samples (submittals). Individual submittal reviews are limited to two (2) per submittal;
 - d. Assist Client in preparing work descriptions for Change Orders;
 - e. Assist Client in reviewing applications for payment from contractor;
 - f. Assist Client in preparing progress memoranda;
 - g. Assist Client in conducting a substantial completion observation of the landscape components and prepare a punchlist (1visit)
3. Assist Client in conducting a final observation of the Project to determine, in general, whether the landscape items contained on the punchlist have been completed or corrected and are in general conformance with the aesthetic intent of the Landscape Construction Documents.
4. The Construction Observation Phase will terminate when final payment to the contractor is due, or in the absence of a final Certificate for Payment, sixty days after the Date of Substantial Completion of the Work, whichever occurs first.

ARTICLE 3: ADDITIONAL SERVICES

All services requested by the Client that are not listed in Article 2 of this Agreement are considered Additional Services. Additional Services are not included in the Basic Fee and shall be paid for by the Client as set forth in Article 5.2 of this Agreement.

- 1.1 Additional Services include, without limitation, the following:
 1. Providing services other than those set forth in Article 2 of this Agreement;
 2. Retaining the services of a licensed surveyor;
 3. Retaining the services of an environmental consultant;
 4. Expert witness services performed in preparing for and serving in connection with public hearings, litigation, arbitration, mediation, and/or negotiations;
 5. Public or other presentations beyond those described in Basic Services;
 6. Preparation of presentation materials for marketing or purposes other than in-progress approvals; construction of presentation models; or preparation of finish quality renderings for the Project;
 7. Revisions to drawings previously provided by Consultant due to changes in the Projects' scope, budget or schedule; instructions that are inconsistent with written approvals or instructions previously given; or enactment or revision of codes, laws, or regulations subsequent to the preparation of such documents;
 8. LEED or Sustainable SITES application, research, documentation, and certification services;
 9. Services related to ADA/accessibility/compliance issues for existing site improvements which may be triggered by the design services for new improvements contemplated by this Agreement;
 10. Any consultation, drawings, reports and other work products related to permits, approvals and ordinances; or, review and processing of permits, approvals and ordinances with agencies or municipalities having regulatory controls over the development not described in Basic Services;

11. Providing work in connection with the services of a construction manager retained by the Client;
12. Preparing drawings, specifications, supporting data and providing other services in connection with change orders to the extent that the adjustment in the basic compensation resulting from the adjusted construction costs is not commensurate with the services required of the Consultant; providing such change orders are required by causes not solely within the control of the Consultant;
13. Providing services made necessary by the default of the contractor, or by major defects or deficiencies in the work of the contractor;
14. Preparation of as-built drawings;

ARTICLE 4: INFORMATION TO BE PROVIDED BY CLIENT

- 2.1 Client shall provide, in a timely manner, all criteria and full information regarding Client's requirements for, and limitations on, the Project, including without limitation:
 1. Legal description and to-scale boundary survey of the property;
 2. All deed restrictions, environmental restrictions, covenants, and all existing or pending municipal, county, state, and federal permits or approvals, and other pertinent information as required during the process;
 3. Topographic survey including 1' contours (unless otherwise agreed by Consultant in writing), tree survey, drainage and flood plain locations, overlay zones or districts, environmental and geotechnical data, utilities, easements, rights-of-way and other existing or proposed physical improvements and impacts of the property. All files to be in AutoCAD format;
 4. Financial/economic information setting forth the budget limitations for the Project including but not limited to the Texas Parks and Wildlife Department grant and City bond funding;
 5. Texas Parks and Wildlife Department grant documents; and
 6. Designate a representative to serve as the point of contact for the project.

ARTICLE 5: COMPENSATION

3.1 BASIC SERVICES

The Client shall compensate the Consultant as follows:

Consultant's compensation shall include the lump sum of \$31,500 dollars for Basic Services (the "Basic Fee"), plus the total for Additional Services performed on an hourly basis at the rates set forth in Section 5.5, plus reimbursable expenses as set forth in Section 5.6. Consultant's total compensation for Basic Services shall be allocated among the various phases of the Project as set forth below and will be billed monthly based on percent of work complete for each phase of the Project, along with Additional Services and reimbursable expenses incurred during the billing period. The amounts indicated do not include amounts resulting from substantial change in scope of the Project or services. The Client agrees to pay the Consultant the following fees for the Basic Services:

Schematic Design Phase Services	\$ 8,000
Construction Document Phase Services	\$ 10,500
Regulatory Services	\$ 3,000
Bidding Phase Services	\$ 3,000
Construction Observation Phase Services	<u>\$ 7,000</u>
Total for Basic Services	\$31,500

3.2 ADDITIONAL SERVICES

The Client shall pay the Consultant for authorized Additional Services performed, including fees and reimbursable expenses. Fees for Additional Services will be included as a separate item on the monthly billing statement.

3.3 INVOICING AND PAYMENT

Consultant will invoice Client monthly for Basic Services and Additional Services performed, and for reimbursable expenses incurred in accordance with the Terms and Conditions of this Agreement. Amounts invoiced are due and payable thirty (30) days following the date of the invoice, at the office of **RVi, 19 Briar**

Hollow Lane, Suite 145, Houston, Texas, 77027. Amounts remaining unpaid sixty (60) days following the date of the invoice shall bear interest at the rate of 12.0% per annum, or at the maximum legal rate allowable, which shall be calculated from the date of the invoice. In no event shall Consultant's failure to bill monthly constitute default under the Terms and Conditions of this Agreement. *Consultant retains the right to halt work pending receipt of any overdue payments, and the right to withhold delivery of final work product if Client does not comply with the payment terms above. Client shall pay all costs and expenses, including without limitation, reasonable attorney's fees and expenses incurred by RVi in connection with the collection of overdue accounts of Client.*

The Client's billing contact information is outlined in the attached exhibit "Client's Billing Contacts"

3.4 HOURLY RATES

The following hourly rates shall apply to the fees described herein and any additional services requested of the Consultant. The rates set forth below shall be adjusted in accordance with the normal salary review practices of the Consultant.

Principal	\$175.00 - \$250.00
Project Director	\$125.00 - \$200.00
Project Manager	\$100.00 - \$175.00
Landscape Architect, Planner, Designer Production	\$80.00 - \$150.00
Technical, Administrative	\$70.00 - \$100.00

3.5 REIMBURSABLE EXPENSES

Reimbursable expenses are in addition to compensation for Basic Services and Additional Services and include expenses incurred by the Consultant in the interest of the Project. Reimbursable expenses include such items as telecommunications, reprographics, computer plots/mapping, deliveries, photography, reproductions; postage; automobile transportation; expenses in connection with out-of-town travel; special consultants; cost of maps, surveys, drawings and reports necessary to conduct the work and not otherwise furnished by the Client; fees paid for securing approval of authorities having jurisdiction over the project; expense of any additional insurance coverage or limits including professional liability insurance requested by the Client in excess of that normally carried by the Consultant and the Consultant's sub-consultants and third-party consultant charges. Reimbursable expenses will be billed at 1.15 times direct cost to the Consultant.

ARTICLE 6: CHANGES

- 6.1 Changes. The Consultant and the Client may make changes to the Agreement 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.
- 6.2 Regulatory Changes. In the event that there are modifications or additions to regulatory requirements relating to the services to be performed under the Agreement after the date of execution of the Agreement, the increased or decreased cost of performance of the services provided for in the Agreement and subsequent Proposals shall be reflected in an appropriate written amendment to the Agreement.

ARTICLE 7: RESPONSIBILITIES OF THE PARTIES

- 7.1 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.
- 7.2 Client shall designate a single 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 it observes or otherwise becomes aware of any defect in the work. If the Client retains a Construction Manager ("CM") for the Project, the Client shall clearly set forth the duties, responsibilities the CM has been assigned by the Client. The Consultant shall be entitled to rely upon the CM's decisions and directions.
- 7.3 Changed Conditions. Consultant shall have the authority to determine the continued adequacy of the Agreement in light of conditions first discovered or information first provided to Consultant after the execution of the Agreement. Should Consultant determine that the Agreement 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 Agreement. If the terms cannot be agreed to, the parties agree that either party has the right to terminate the Agreement.

- 7.4 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 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.
- 7.5 Other Information. Consultant may rely upon commonly used sources of data including but not limited to database searches, publicly available topographic information, GPS coordinates, demographics, and other public information as required. Consultant does not warrant the accuracy of the information obtained from those sources and has not been requested to independently verify such information.
- 7.6 Site Visits. Unless otherwise specifically set forth in the Agreement or a fully executed written Amendment, Client-requested site visits are on an as-requested fee basis for the purpose of visual observation only for general conformance with the Landscape Construction Documents at the time of observation. 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. Consultant is not obligated to conduct any tests in connection with site visits. Consultant at all times reserves the right to make site visits solely for its own collection of information relevant to, and for the benefit of, the performance of its Services.
- 7.7 Construction Exclusion. Consultant's scope of work does not include, and Consultant shall have no authority or responsibility for supervising, directing, performing or controlling any contractor's work, or the means, methods, techniques, sequences, safety measures, or procedures of construction selected by any contractor or subcontractor. Accordingly, Consultant shall have no responsibility or liability for the acts or omissions of any contractor, subcontractor, supplier or any other entity furnishing materials or performing any work on the Project, including, but not limited to, compliance with any applicable law
- 7.8 No Warranty. Consultant and Client acknowledge and agree that Consultant makes no warranties, express or implied, regarding the Services provided in connection with the Project and 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.
- 7.9 Estimates of Probable Costs. Client and Consultant agree that any construction cost estimates provided by Consultant are solely for the purpose of providing information for use in revising the Instruments of Service, and that Consultant makes no warranty, express or implied, that any estimates will not differ from bids received from contractors or the negotiated cost of the work. Opinions of cost are based on the experience and judgment of Consultant and are merely opinions. Consultant does not warrant that actual costs will not vary from those opinions because, among other things, Consultant has no control over market conditions. If the fixed limit of construction cost is exceeded by the lowest bona fide bid or negotiated proposal by more than 20%, 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 8: TERMINATION

- 8.1 This Agreement 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 Agreement 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.
- 8.2 If the Client fails to make payments to the Consultant in accordance with the Agreement, 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 Agreement. 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.
- 8.3 If the Project is suspended or the Consultant's services are suspended for more than 90 consecutive days, the Consultant may terminate the Agreement by giving not less than seven days' written notice. If Consultant shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Consultant shall be compensated for any 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.

- 8.4 This Agreement 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.
- 8.5 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 Agreement 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 9: LIMITATIONS OF LIABILITY

- 9.1 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 Consultant, its directors, officers, partners, employees, subconsultants and subcontractors (the "Limited Parties"), to Client 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. Moreover, 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.
- 9.2 Waiver of Special/Consequential Damages. Notwithstanding any other provision of this Agreement, Client and Consultant agree that neither party, nor their respective directors, officers, employees shall in any event be liable to the other for any punitive, special, incidental, or consequential damages, including, without limitation, damages incurred for lost business opportunity or profits, arising out of or relating to the Agreement 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 whether it was committed by the Client or by Consultant.
- 9.3 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 occur, the Client agrees Consultant is not responsible for damages, nor shall Consultant be deemed to be in default of the Agreement. To the extent necessary as caused by any delay, Consultant shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation.
- 9.4 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 10: RELATIONSHIP OF PARTIES

- 10.1 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.

- 10.2 No Fiduciary Duty. Client recognizes that neither Consultant nor any of Consultant's subconsultants or subcontractors owes any fiduciary responsibility to Client.
- 10.3 Corporate Services. Client agrees that Consultant has entered the Agreement 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.
- 10.4 No Third-Party Beneficiaries. Consultant's work product, including without limitation all services and all Instruments of Service that are provided in connection with the Project, are intended solely for the benefit and exclusive use of the other party, and any benefits arising out of those obligations or any other services performed by Consultant in connection with the Project that may accrue to third parties are entirely incidental. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party. There are no intended third-party beneficiaries to the Agreement.

ARTICLE 11: MISCELLANEOUS PROVISIONS

- 11.1 Merger. The Agreement, including any attachments, represents the entire and integrated agreement between the Client and the Consultant. The Agreement supersedes all prior negotiations, representations or agreements, whether written or oral, and the same shall have no force or effect. The Agreement may be amended only by written instrument signed by both Client and authorized representative Consultant.
- 11.2 Execution. This Agreement may be executed in any number of multiple counterparts, all of which taken together shall constitute one and the same agreement.
- 11.3 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 Agreement 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.
- 11.4 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 full payment by Client to Consultant under this Agreement Consultant grants to the Client a non-exclusive license to reproduce and utilize the Consultant's Instruments of Service: (i) to complete the development or construction of the Project, as applicable; (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. Absent full payment by Client under this Agreement, Consultant grants no rights in Instruments of Service.
 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 REUSE, CHANGE OR ALTERATION.
- 11.5 Attorney's Fees Client shall pay Consultant, in addition to any other amounts found to be owing, all costs of collection arising from unpaid invoices, including reasonable attorney's fees.
- 11.6 Governing Law. The Agreement shall be governed by and construed in accordance with the laws of the State of Texas.
- 11.7 Venue. Consultant and Client agree that the venue of any action under the Agreement shall be exclusively in the jurisdiction of the Consultant office in which the work was performed.

- 11.8 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.
- 11.9 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.
- 11.10 Successor and Assigns. Neither Client nor Consultant shall assign, sublet, or transfer this interest in the Agreement without the written consent of the other. Client's representative signing Agreement warrants that he or she has full authority to bind Client to the Agreement. Nothing in this provision restricts Consultant's ability to hire subcontractor(s) in connection with the services to be provided.
- 11.11 Dispute Resolution. All claims, disputes or other matters in question arising out of or related to the Agreement 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 the institution of arbitration or 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 Agreement or the services provided thereunder and not resolved first through mediation shall be decided by binding 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 the Agreement. 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.
- 11.12 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 Consultant and of Client which would otherwise survive termination of the Services.
- 11.13 Texas Board of Architectural Examiners. To the extent that this Agreement includes landscape architectural services, under Chapter 1052 of the Texas Occupations Code, the Texas Board of Architectural Examiners - 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3945, telephone (512) 305-9000 - has jurisdiction over complaints regarding the professional practices of persons registered as Landscape Architects in Texas.

ARTICLE 12: APPROVED AND ACCEPTED

Client approves and accepts the Agreement and authorizes Consultant to commence work upon Consultant's receipt of the properly executed and signed Agreement and specific amendments. If the Agreement is not executed by Client within thirty (30) days of the date tendered, it shall become invalid unless: (1) Consultant extends the time in writing; or (2) at the sole option of Consultant, Consultant accepts Client's oral, email or other written authorization to proceed with services, in which event the terms of the authorization shall be deemed to include all the terms of this Agreement. Consultant's performance of the services under such authorization shall be in reliance on the inclusion and incorporation of all the terms of the Agreement in the authorization.

RVi Planning + Landscape Architecture, Inc.

Signature: _____

Printed Name: Chris Patterson

Title: Senior Vice President

Date: November 6, 2018

City of Deer Park

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT "A"

DEER PARK NORTH EAST HIKE & BIKE TRAIL LIMIT OF WORK EXHIBIT

