

PROFESSIONAL SERVICES AGREEMENT BETWEEN

City of Seguin, Texas

AND

Rialto Studio, Inc.

THIS Agreement is entered into as of April ____, 2014 , between City of Seguin (hereinafter referred to as "OWNER") and Rialto Studio, Inc. (hereinafter referred to as "CONSULTANT") for professional architectural services and construction administration for an approximately 48.41 acre park in Seguin, Texas and based on the "Community Park Master Plan" prepared by Rialto Studio, July 2010 and updated August, 2013 (hereinafter referred to as the "PROJECT").

In consideration of their mutual covenants contained herein, OWNER and CONSULTANT hereby agree in respect to the performance of services by CONSULTANT and the payment for those goods and services by OWNER as set forth below.

I. BASIC SERVICES OF CONSULTANT

CONSULTANT shall provide professional services to the OWNER of the PROJECT as set forth in this Agreement and as specifically outlined in the Scope of Services that is attached hereto as Exhibit "A."

CONSULTANT shall provide its services in accordance with the City's Terms and Conditions for Professional Services that is attached hereto as Exhibit "B." To the extent that this Agreement conflicts with Exhibit B, This Agreement shall prevail.

II. ADDITIONAL SERVICES OF CONSULTANT

If authorized in writing by OWNER, CONSULTANT shall furnish or obtain from others acceptable to OWNER Additional Services of the following types which are not considered part of the normal or customary services of a landscape architect within its Basic Services.

2.1 Services resulting from significant changes in extent of the PROJECT or its design including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction, and revising previously accepted studies, reports, design documents, or Contract Documents when revisions are due to causes beyond CONSULTANT's control.

2.2 Furnishing the services and coordination of special consultants.

III. OWNER'S RESPONSIBILITIES

3.1 OWNER shall provide full information regarding its requirements for the PROJECT.

3.2 OWNER has or shall furnish full information about and affecting the site and design.

3.3 If OWNER or CONSULTANT becomes aware of any fault or defect in the PROJECT, they shall give prompt written notice to CONSULTANT or OWNER as the case may be.

3.4 OWNER shall furnish information required of it as expeditiously as necessary for the orderly progress of the work. It shall be CONSULTANT's responsibility to timely advise OWNER of all such requirements and restraints with respect to its needs for such information.

3.5 OWNER shall make payment to CONSULTANT within thirty (30) days from receipt of CONSULTANT's applicable invoices.

3.6 OWNER shall give prompt written notice to CONSULTANT whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services, or any perceived defect in the work of CONSULTANT.

IV. METHODS OF PAYMENT FOR SERVICES AND EXPENSES OF CONSULTANT

4.1 Compensation for services shall be the amount detailed in Exhibit A.

4.2 Additional Services – OWNER shall pay CONSULTANT for Additional Services rendered under Section II with prior written approval by OWNER an amount based upon approved hourly rates for services rendered by principals and employees assigned to the PROJECT and other subcontractors' labor charge for services rendered by subcontractors approved by OWNER.

4.3 Reimbursable Expenses – In addition to payments provided for in Paragraphs 4.1 and 4.2 above, OWNER shall pay CONSULTANT the reasonable costs of all Reimbursable Expenses, including reproduction, travel approved by OWNER, express delivery, express mail, and OWNER- approved subcontractor expenses, incurred in connection with the project as detailed in Exhibit A.

V. TIMES OF PAYMENT

CONSULTANT shall submit monthly invoices for Basic and Additional Services rendered by the 25th of the month. OWNER shall make prompt monthly payments in response to CONSULTANT's monthly invoices.

VI. OTHER PROVISIONS CONCERNING PAYMENT

6.1 Payments to CONSULTANT are due thirty (30) days after receipt by OWNER of billing. In the event of a bona fide dispute by OWNER of any sums for which

payment has been requested, no interest shall be due on such disputed sums until such dispute is resolved, provided all undisputed sums shall have been paid.
Invoices for payment under this Agreement will be addressed as follows:

Jack Jones
Director of Parks and Recreation
600 River Drive West
Seguin, Texas 78155

With a copy to:
Douglas G. Faseler, City Manager
City of Seguin
210 East Gonzales Street
Seguin, Texas 78115

and will clearly indicate on the face of the invoice, the assigned OWNER Contract Control Number and the percentage of total contract billed to date.

VII. PERIOD OF SERVICE

7.1 The provisions of this Section VII and the various rates of compensation for CONSULTANT's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the PROJECT.

7.2 This Agreement shall commence upon execution, and shall continue thereafter until the date when the final submissions for the Basic Services have been accepted by OWNER, unless sooner terminated by either party.

7.3 If OWNER requests significant modifications or changes in the extent of the PROJECT, the time of performance of CONSULTANT's services shall be adjusted appropriately.

VIII. TERMINATION OF AGREEMENT

This Agreement may be terminated by OWNER immediately upon seven (7) days written notice, with or without cause and whether or not CONSULTANT is in default or breach hereunder. In the event of termination, not the fault of CONSULTANT, CONSULTANT shall be compensated for all services performed to termination date then due. In no event shall CONSULTANT be entitled to any compensation for services not actually performed as of the date of termination.

This Agreement may be terminated by CONSULTANT immediately upon seven (7) days written notice to OWNER, with or without cause and whether or not OWNER is in default or breach hereunder.

In the event of termination for reasons other than the failure, default or breach of CONSULTANT, by OWNER upon completion of any Services, payment due CONSULTANT for services rendered shall constitute total payment for such services.

X. SUCCESSORS AND ASSIGNS

OWNER and CONSULTANT respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither OWNER nor CONSULTANT shall assign, sublet or transfer any interest in this Agreement without the written consent of the other, except that OWNER may assign this Agreement to any affiliated party provided that OWNER shall nevertheless continue to be responsible for payment of all Services incurred through the date of such assignment.

XI. EXTENT OF AGREEMENT

This Agreement represents the entire integrated Agreement between OWNER and CONSULTANT and supersedes all prior negotiations, representations or agreement. This Agreement may be amended only by written instrument signed by both OWNER and CONSULTANT.

XII. GOVERNING LAW

This Agreement shall be governed by the law of the State of Texas, and the location for settlement of any and all claims arising out of or relating to this Agreement or any breach thereof, whether by arbitration or litigation, shall be the District Courts of Guadalupe County, Texas.

XIV. INDEMNIFICATION

14.1 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE CONSULTANT SHALL INDEMNIFY, PROTECT, AND HOLD HARMLESS THE OWNER, OWNER'S PARTNERS, AFFILIATED COMPANIES OF OWNER, AND ANY PARTNER, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES (COLLECTIVELY, THE "INDEMNITEES") FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, LIENS, CAUSES OF ACTION, FINES, PENALTIES, SUITS, JUDGMENTS, SETTLEMENTS, COSTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO COURT COSTS AND REASONABLE ATTORNEYS' FEES, OF ANY NATURE, KIND OR DESCRIPTION, ARISING OUT OF OR RESULTING FROM, BUT ONLY TO THE EXTENT CAUSED BY THE NEGLIGENT PERFORMANCE OF THE SERVICES, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS, LIABILITY, LIEN, CAUSE OF ACTION, FINE, PENALTY, SUIT, JUDGMENT, SETTLEMENT, COST, OR EXPENSE IS ATTRIBUTABLE TO, ARISES OUT OF, OR RESULTS FROM BODILY INJURY TO, SICKNESS, DISEASE, OR DEATH OF ANY EMPLOYEE, OR REPRESENTATIVE OF CONSULTANT, OR CONSULTANT'S SUBCONTRACTORS OR SUBCONSULTANT'S OF ANY TIER, TO THE EXTENT

SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO BE THE NEGLIGENCE OF THE CONSULTANT PROVIDED THE INDEMNITY IN THIS PARAGRAPH DOES NOT APPLY WITH RESPECT TO LIABILITIES RESULTING FROM THE NEGLIGENCE OF AN INDEMNITEE.

14.2 THE ABOVE INDEMNIFICATION IS INDEPENDENT FROM CONSULTANT'S INSURANCE OBLIGATIONS HEREUNDER AND SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION, OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEES' BENEFIT ACTS. THE ABOVE INDEMNIFICATIONS SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT AND SHALL CONTINUE IN EFFECT FOR THE MAXIMUM PERIOD OF TIME ALLOWED BY APPLICABLE LAW.

14.3 THE CONSULTANT SHALL NOT SETTLE OR COMPROMISE ANY THIRD PARTY CLAIM WITHOUT PRIOR WRITTEN CONSENT OF THE INDEMNITEE TO THE TERMS OF THE SETTLEMENT, UNLESS (I) THE TERMS OF SUCH COMPROMISE OR SETTLEMENT REQUIRE NO MORE THAN THE PAYMENT OF MONEY, (II) THE FULL AMOUNT OF SUCH MONETARY COMPROMISE OR SETTLEMENT IS PAID BY THE CONSULTANT, AND (III) THE INDEMNITEE RECEIVES AS PART OF SUCH SETTLEMENT A LEGAL, BINDING AND ENFORCEABLE UNCONDITIONAL SATISFACTION AND/OR RELEASE, IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO IT, PROVIDING THAT SUCH THIRD PARTY CLAIM AND ANY CLAIMED LIABILITY OF THE INDEMNITEE WITH RESPECT THERETO IS FULLY SATISFIED BY REASON OF SUCH COMPROMISE OR SETTLEMENT AND THAT THE INDEMNITEE IS BEING RELEASED FROM ANY AND ALL OBLIGATIONS AND LIABILITIES IT MAY HAVE WITH RESPECT THERETO.

14.4 IN NO EVENT SHALL EITHER OWNER OR CONSULTANT BE LIABLE TO EACH OTHER, FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, ARISING FROM OR RELATED TO CONSULTANT'S PERFORMANCE OF THE SERVICES FOR OWNER, OR TO CONSULTANT'S OR OWNER'S PARTICIPATION IN THIS AGREEMENT OR AT THE PROJECT, UNLESS SUCH LOSS OR DAMAGE OCCURS AS A RESULT OF SUCH PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

XV. MISCELLANEOUS CONDITIONS OR SERVICES

15.1 No liability shall attain in favor of CONSULTANT as against any officer, director, member, agent or employee of OWNER and CONSULTANT will look solely to the assets of OWNER for the satisfaction of OWNER's obligations, duties and liabilities under this Agreement.

15.2 CONSULTANT's duties and responsibilities under this Agreement are personal in nature and this Agreement shall not be assigned, transferred or shared by CONSULTANT with any other person, firm or a corporation without prior written notification and approval of OWNER.

15.3 Unless notification is otherwise given in writing, OWNER's representative shall be Jack Jones, Director of Parks and Recreation. Unless otherwise agreed to in writing by the parties, CONSULTANT shall be represented by Peter Hinton, CONSULTANT's representative is the party empowered by CONSULTANT to receive all notices and communications and to act in all respects for CONSULTANT to the extent of CONSULTANT's responsibilities herein.

15.4 CONSULTANT shall provide its services and obligations in conformity with the standards of care and skill of its profession.

15.5 CONSULTANT hereby subordinates any and all liens, rights and interest (whether choate or inchoate and including, without limitation, all mechanics and materialmen's liens under the applicable state constitution or statutes) owned, claimed or held, or to be owned, claimed or held by CONSULTANT in and to any part of the work or the property on which the work is performed to any and all liens in favor of any lender that provides financing for the project now or in the future.

15.6 CONSULTANT hereby agrees and shall include a provision in all its agreements to the effect that, OWNER is a third party beneficiary of all agreements between CONSULTANT and its subcontractors for the performance of its services required by this Agreement. Nothing contained herein shall be deemed to impose any obligation on OWNER with respect to such agreements.

15.7 CONSULTANT agrees to abide by all OWNER policies and procedures applicable to the work as the same may be revised from time to time, including: i) drug free workplace; ii) no conflict of interest; iii) no smoking policy; iv) prohibition of concealed weapons on OWNER's premises; and v) permit required before conducting any welding, braising or other "hot" work on the jobsite. OWNER may require CONSULTANT to immediately prevent any of its employees, in OWNER's sole judgment, who do not comply with these policies or who are otherwise objectionable to OWNER from providing any further services under this agreement or from coming on OWNER's premises.

This Agreement executed the day and year first written above.

City of Seguin, Texas

Rialto Studio, Inc.

By: _____
Douglas G. Faseler
City Manager

By: _____
Peter Hinton, ASLA
Executive Vice-President & Principal