

PROFESSIONAL SERVICES AGREEMENT

I. Agreement

1.01. This agreement (“*Agreement*”) is made by and between Threadgold Architecture + Construction, LLC (“*Designer*”) and Client (defined below and along with Designer, the “*Parties*” or individually a “*Party*”). This Agreement is for the provision of architectural design services as specifically described herein, upon the terms and conditions contained herein. The general information for the Client, services, project, and fee are as follows:

Client:		(“ <i>Client</i> ”)
Effective Date:		(“ <i>Effective Date</i> ”)
Pre Design Plan:		
Project Name and Description:		(“ <i>Project</i> ”)
Project Address:		
Deposit Amount:		(“ <i>Deposit</i> ”)
Fee:		(“ <i>Fee</i> ”)
Invoice Schedule:		(“ <i>Invoice Schedule</i> ”)
Payment Terms:	[net 10 days of receipt of invoice]	(“ <i>Payment Term</i> ”)

1.02. This proposal is valid only if returned within five (5) days of the Effective Date and signed by all Parties and the Deposit is paid to Designer.

II. Scope of Services and the Project

2.01. Designer’s scope of services for the project (“*Services*”) are enumerated on Exhibit A, any work not listed on Exhibit A is expressly excluded. Further, Designer’s Services specifically do not include any work listed on Exhibit B, which such work would be considered Additional Services (discussed below). Designer’s Services will commence upon receipt of this fully executed Agreement and payment of the Deposit.

III. Compensation

3.01. Designer shall provide no Services until the Deposit is paid by Client. Client agrees to pay Designer the Fee for Designer’s Services. Invoices for Designer’s Services will be submitted per the Invoice Schedule. See attached Exhibit C for hourly rates and the Invoice Schedule. Client agrees that it shall pay invoices within the Payment Term.

3.02. Reimbursable expenditures (including, but not limited to, printing and plotting costs, delivery services, travel expenses for site visits) shall be billed at 1.1 times invoice cost. See Exhibit C for additional information on reimbursable expenditures.

3.03. Any work not listed on Exhibit A, is not included in Designer’s scope of work and is considered an additional service (“*Additional Services*”). Additional Services may be requested by Client but will not be performed or become part of Designer’s Services unless agreed to in writing by Designer. Compensation for authorized Additional Services shall be on a lump sum basis or on an hourly basis at Designer’s sole discretion.

IV. Terms and Conditions

1. **Definitions:** As used herein, “*Contractor*” shall mean the general contractor for the Project and its subcontractors; “*Instruments of Service*” shall mean drawings, specifications, and any other documents, including those in electronic form, prepared by Designer for use solely on this Project.

2. **Designer’s Responsibilities:** Designer’s Services under this Agreement will be performed in a manner consistent with that degree of skill and care ordinarily exercised by practicing architects and/or designers performing similar services in the same locality, at the same site and under the same or similar circumstances and conditions. Designer makes no other warranties, express or implied, with respect to Designer’s Services rendered, and all such warranties are hereby expressly disclaimed.

3. **Client’s Responsibilities:** Client shall provide available information in a timely manner regarding any requirements or limitations for the Project and any other information reasonably requested by Designer concerning the Project, including but not limited to bids, construction schedules, budgets, and/or any other information provided by other consultants, contractors, or vendors on the Project.

Client shall provide prompt written notice to Designer if Client becomes aware of any fault or defect with respect to the Project, including any errors, omissions, or inconsistencies with Designer’s Instruments of Service.

Client agrees to comply with all applicable laws, regulations, and ordinances relating to its performance hereunder. Client is responsible for obtaining all permits and approvals from any homeowners associations. Client shall be liable to Designer for all loss, cost, and expense attributable to any acts of commission or omission by Client, its employees or agents resulting from the failure to comply with all laws, regulations, and ordinances relating to their performance hereunder, including, but not limited to, any fines, penalties, or corrective measures.

4. **Reliance:** Designer is entitled to rely on the accuracy and completeness of services, designs, CAD backgrounds, and any other information furnished by Client, the Client’s consultants, and/or the Contractor.

5. **Site Observation Visits:** Site observation visits are performed for the sole purpose of determining general conformance with the intent of the Instruments

of Service and do not relieve the Contractor of the obligation to perform work in accordance with the Instruments of Service. Designer will only conduct site observation visits following the express written request by Client and acknowledgement by Designer in writing, and if specifically included in the Services. Client agrees to notify Designer a minimum of forty-eight hours prior to the requested time of the site observation visit. Under no circumstances is Designer required to make exhaustive or continuous site observation visits to check the quality or quantity of work performed on the Project.

6. **Shop Drawing Review:** If requested by Client and expressly included in the Services, Designer will review submittals, such as shop drawings, product data, samples, and other data, for the limited purpose of checking for conformance with the design concept and the information shown in the Instruments of Service. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor and or Client. Review of a specific item shall not indicate that Designer has reviewed the entire assembly of which the item is a component. Designer shall not be responsible for any deviation from the Instruments of Service not brought to the attention of Designer in writing by the Contractor or Client. Designer shall not be required to review partial submissions or those for which submissions of correlated items have not been received. Designer’s review shall be conducted with reasonable promptness while allowing sufficient time in Designer’s judgment to permit adequate review.

Client shall confer with Designer before issuing interpretations or clarifications of documents prepared by Designer and shall request the recommendation of Designer before providing interpretations or clarifications of shop drawings, product data, samples or other submissions of the contractor, or upon change orders and construction change directives affecting Designer’s Services for the Project.

7. **Means and Methods:** Designer shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction work performed on the Project, since these are solely the Contractor’s rights and responsibilities.

Designer shall not be responsible for the Contractor's failure to perform any construction work in accordance with the requirements of the Instruments of Service. Designer shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of construction work on the Project.

8. **Guarantees and Warranties:** Designer shall not be required to execute any document that would result in its certifying, guaranteeing or warranting the existence of conditions whose existence Designer cannot ascertain.

9. **Limitations:** Causes of action between the Parties to this Agreement pertaining to acts or failures to act, with the exception of any causes of action concerning the Client's failure to pay Designer, shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the Effective Date. In no event shall such statutes of limitations commence to run any later than the date when Designer's Services are substantially completed.

10. **Hazardous Material Indemnity:** The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Designer from and against any and all claims arising out of the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances that exist on or adjacent to the Project site. Designer shall have no liability whatsoever for the discovery, presence, handling, removal, disposal, or exposure of persons to hazardous materials, toxic substances, or mold in form at the Project site.

11. **Limitation of Liability:** In recognition of the relative risks, rewards, and benefits of the Project to both the Client and Designer, the risks have been allocated such that the Client agrees that, in no event and to the fullest extent permitted by law, Designer's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claim expenses arising out of this Agreement from any cause or causes, whether arising out of contract, tort, negligence, warranty, strict liability or any other legal or equitable theory, shall not exceed \$25,000.00 or the amount actually paid by Client to Designer for Designer's Services, whichever is greater.

Designer shall have no liability whatsoever for any injuries, negligent acts or omissions, damages, losses, claims, causes of action, or defects resulting from any change to the Instruments of Service or to any part of

Designer's work without the advance, written consent of Designer.

Designer shall not be responsible for the acts or omissions of the Client or Client's other consultants, independent contractors, agents, or employees.

No claims shall be made against Designer for delays or damages based in whole or in part on (a) the length of time required for review of information provided by Client or any other entity, (b) the acts or omissions of others with whom Designer has no written contract or over whom it has no authority to control, or (c) circumstances beyond Designer's control.

12. **INDEMNIFICATION: CLIENT UNDERSTANDS AND AGREES THAT IT SHALL BE SOLELY RESPONSIBLE AND SOLELY LIABLE FOR ANY AND ALL CHANGES OR MODIFICATIONS TO THE INSTRUMENTS OF SERVICE MADE WITHOUT DESIGNER'S WRITTEN PERMISSION. ACCORDINGLY, CLIENT WARRANTS AND AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS DESIGNER AND ITS OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, EMPLOYEES, AGENTS AND CONSULTANTS, AND ITS/THEIR AFFILIATED ENTITIES (COLLECTIVELY THE "INDEMNITEES" AND INDIVIDUALLY AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL DAMAGES, COSTS AND EXPENSES OF WHATSOEVER KIND OR CHARACTER, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND EXPENSES, ACTUALLY INCURRED BY SUCH INDEMNITEES WITH RESPECT TO ANY CLAIM (INCLUDING BODILY INJURY OR DEATH), ARISING OUT OF OR RELATING TO THE FOLLOWING: (A) ANY MODIFICATION OF THE INSTRUMENTS OF SERVICE WITHOUT DESIGNER'S ADVANCE, WRITTEN PERMISSION; (B) THE**

INTENTIONAL, WILLFUL, OR NEGLIGENT ACT, ERROR, OR OMISSION OF CLIENT, CONTRACTOR, OR ANYONE ACTING ON ITS/THEIR BEHALF, INCLUDING, BUT NOT LIMITED TO, SUPPLIERS, CONSULTANTS, SUBCONTRACTORS AND VENDORS, AND THEIR SUBCONSULTANTS, SUBCONTRACTORS AND SUBVENDORS, AND THE EMPLOYEES AND AGENTS OF ANY OF THE FOREGOING; (C) ANY BREACH OR DEFAULT IN THE PERFORMANCE BY CLIENT OF ANY WARRANTY, REPRESENTATION, COVENANT OR AGREEMENT; AND (D) ANY LIABILITY ARISING OUT OF ANY AND ALL ACTIONS, DEMANDS, JUDGMENTS, COSTS AND EXPENSES INCIDENT TO THE FOREGOING. THIS INCLUDES, BUT IS NOT LIMITED TO, UNPAID EXPENSES, LIENS, OR OTHER POTENTIAL SUBROGATION CLAIMS.

For purposes of this Agreement, any assertion of fact and/or law by a third party shall, on the date that assertion is made, immediately invoke Client's obligation to protect, defend, hold harmless and indemnify any and all Indemnitees under this Agreement. When an Indemnatee proposes to assert the right to be indemnified under this Section, that Indemnatee shall, to the extent that it desires, have the right to jointly direct the defense with Client with counsel of its own choosing. Client shall pay the fees and expenses of an Indemnatee's separate counsel if: (a) the Indemnatee has reasonably concluded that there may be a conflict of interest between Client and one or more of the Indemnitees in the conduct of the defense of such action; or (b) Client has not employed counsel satisfactory to the Indemnatee to assume the defense of the action. In each of these cases, the fees and expenses of the Indemnatee's counsel shall be paid by Client when such fees and expenses are due. An Indemnatee shall not be liable for any settlement of any action or claim that is effected without its consent.

13. **Claims for Consequential Damages:** The Client and Designer waive consequential damages, lost profits, lost savings, loss of goodwill, indirect, special, and/or incidental damages of any kind whatsoever for

claims, disputes, causes of action or other matters in question arising out of or relating to this Agreement, regardless if Designer or Client have been informed of the possibility of such damages. This mutual waiver is applicable, without limitation, to all consequential damages due to either Party's termination in accordance with the Suspension/Termination of Designer's Services set forth below. For purposes of this Agreement, any damages owed by Client to any other entity are considered consequential damages.

14. **Lien Rights:** Nothing in this Agreement shall limit any rights or remedies Designer may otherwise have.

15. **Payments:** If an invoice is not paid within the terms noted above, Designer may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, suspend/terminate the performance of Designer's Services without notice. Client's payment of an invoice shall mean Client is satisfied with Designer's Services to date and that Client is not aware of any deficiencies in Designer's Services, work, or Instruments of Service.

16. **Late Payments:** Accounts unpaid 30 days after the invoice date will accrue interest at a rate of 1.5% per month (or the highest rate allowed by law if less) on the then unpaid balance. Client shall pay all costs of collection for unpaid invoices, including reasonable attorney's fees.

17. **Instruments of Services:** All Instruments of Service and documents produced by Designer under this Agreement shall remain the property of Designer, are solely for use at the Project, and may not be used by the Client for any other project or endeavor without the prior written consent of Designer, which may be withheld in Designer's sole discretion. Designer shall be deemed the author and owner of all Instruments of Service and shall retain all common law, statutory, and other reserved rights, including copyrights. Client agrees to not make changes to Designer's Instruments of Service without Designer's prior written consent.

Upon execution of this Agreement, the Designer grants to the Client a nonexclusive license to reproduce the Designer's Instruments of Service for purposes of designing, administering, using and maintaining the Project, provided that the Client shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license.

18. **Independent Contractor:** Designer is an independent contractor and no employment, agency, or

fiduciary relationship exists between Designer and Client.

19. **Suspension/Termination of Services:** This Agreement may be suspended or terminated by Designer upon written notification to Client. In the event of termination, the Client shall pay Designer for all Designer's Services rendered to the date of suspension/termination, all reimbursable expenses, and reimbursable suspension/termination expenses. Any termination of this Agreement, for any reason whatsoever, shall not alter, affect or terminate the rights and obligations of the Parties to one another that are created by this Agreement, nor shall termination of this Agreement prejudice any right or remedy that each Party has in law or in equity or under this Agreement. In the event Designer suspends services due to non-payment by Client, Designer shall have no liability for delay or damage due to the suspension of services. Before resuming services, Designer shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of its services.

20. **No Waiver:** No delay or omission by either Party hereto to exercise any right or power occurring upon any noncompliance or default by the other Party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition, or agreement herein contained. Unless stated otherwise, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity, or otherwise. No exercise or enforcement by either Party of any right or remedy under this Agreement will preclude the enforcement by such Party of any other right or remedy under this Agreement or that such Party is entitled by law to enforce. No notice to or demand on a Party in any case entitles such Party to any other or further notice or demand in similar or other circumstances.

21. **Dispute Resolution:** Any claims or disputes between the Client and Designer arising out of the Designer's Services to be provided by Designer for this Agreement shall be submitted to nonbinding mediation unless both Parties mutually agree otherwise. The Client agrees to include a similar mediation agreement with all contractors, subconsultants, subcontractors, suppliers and fabricators, providing for mediation as the primary method for dispute resolution among all Parties.

22. **No Assignment:** Neither Party may, without the prior written consent of the other Party, assign or transfer this Agreement or any obligation incurred hereunder, voluntarily or involuntarily. For purposes of this Agreement, a transfer of this Agreement pursuant to a transaction such as a merger, consolidation, reorganization, change of control, stock sale or exchange, sale of any substantial portion of a Party's assets or similar transaction will not be deemed to be an assignment. Any attempt to assign this Agreement in contravention of this Section shall be void and of no force and effect. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and permitted assigns.

23. **No Third-Party Beneficiary:** Except as otherwise expressly provided herein, this Agreement is solely for the benefit of the Parties to this Agreement and their respective successors and permitted assigns, and no other person has any right, benefit, priority or interest under or because of the existence of this Agreement as a third-party beneficiary or otherwise.

24. **Governing Law/Jurisdiction:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without giving effect to principles of conflicts of law thereof. Further, the Parties expressly consent to the sole and exclusive jurisdiction and venue in the United States District Court for the Northern District of Texas, Dallas Division, or the District Courts of Dallas County, Texas, and all applicable appellate courts. Accordingly, any action or proceeding brought by either Party which is based on, or derives from, this Agreement will be brought in such courts. **THE PARTIES IRREVOCABLY WAIVE ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH ANY OF THEM MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS. EACH PARTY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY SUCH COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY POSTAGE PREPAID REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO EACH OF THE OTHER PARTIES AT ITS ADDRESS PROVIDED HEREIN.**

25. **Severability:** If any provision in this Agreement is invalid or unenforceable or contrary to

applicable law, such provision shall be construed, limited, or altered, as necessary, to eliminate the invalidity or unenforceability or the conflict with applicable law, and all other provisions of this Agreement shall remain in effect.

26. **Entire Agreement:** This Agreement (including all schedules, exhibits, attachments, or addenda referenced in and/or attached to this Agreement) sets forth the final, complete, and entire agreement between the Parties and supersedes any prior agreements or understandings, promises, representations, inducements, conditions, letters of intent, understandings, negotiations and discussions of the Parties, whether oral or written, with respect to the subject matter hereof. Any prior agreements or understandings, letters of intent, understandings, negotiations and discussions, promises, representations, inducements, or conditions not expressly set forth in this Agreement are of no force or effect. No change, alteration, amendment, modification, waiver, or discharge hereof shall be valid unless it is in writing and is executed by a person authorized to execute agreements on behalf of the Party against whom such change, alteration, amendment, modification, waiver, or discharge is sought to be enforced.

27. **Force Majeure:** If either Party shall be prevented from or delayed in performing any of its obligations under this Agreement, except for Client’s payment obligations to Designer, as a result of force majeure, the affected Party shall immediately notify the other Party and shall use all commercially reasonable

efforts to minimize the effect of such force majeure event(s). In the occurrence of a force majeure event, the obligations of the Party giving the notice will be suspended, so far as it is affected by the force majeure event. For the purposes of this Agreement, “force majeure” shall include events and/or circumstances outside the reasonable control of the affected Party, including acts or restraints of government, war, civil war, riot, terrorism, civil disturbance, accident, pandemic, epidemic, stoppage of or interference with transport facilities or non-supplies or irregular supplies of raw or auxiliary materials or energy. Work will resume as soon as force majeure has ceased. The affected Party will not be liable for delay or non-fulfillment of this Agreement resulting (directly or indirectly) from force majeure.

28. **Execution in Multiple Counterparts:** This Agreement may be executed in two or more counterparts, including facsimiles, digital, and scanned electronic images, each of which shall be deemed an original, but all of which together shall constitute one single instrument between the Parties. Photocopy, digital, or facsimile signatures may be used and will have the same force and effect as originals. No Party may raise the use of a facsimile, scanner, digital, or telecopier machine as a defense to the enforcement of this Agreement or any amendment or other document executed in compliance with this paragraph. The Parties specifically agree that electronic signatures from online third-party resources (such as DocuSign, Hello Sign, Ready Sign, etc.) can be used and shall have the full force and effect of indicating the Party’s assent to this Agreement.

IN WITNESS WHEREOF, each of the Parties has executed this Agreement effective as of the Effective Date.

<p>DESIGNER</p> <p>By: _____ [signature]</p> <p>_____ [typed name],</p> <p>its duly authorized representative.</p>	<p>CLIENT</p> <p>_____ [name of Client]</p> <p>By: _____ [signature]</p> <p>_____ [typed name],</p> <p>its duly authorized representative.</p>
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EXHIBIT A
SCOPE OF SERVICES

**EXHIBIT B
EXCLUSIONS**

