

**AGREEMENT BETWEEN THE CITY
OF HUNTSVILLE AND URBAN
DESIGN ASSOCIATES, LTD FOR
ADDITIONAL SERVICES RELATED
TO THE MILL CREEK DISTRICT
MASTER PLAN UPDATE**

STATE OF ALABAMA)
)
COUNTY OF MADISON)

AGREEMENT FOR MILL CREEK MASTER PLAN UPDATE

This Agreement is made this 14th day of April 2022, by and between the City of Huntsville, Alabama, a municipal corporation (hereinafter referred to as the “City”) and Urban Design Associates, Ltd., a Pennsylvania corporation (hereinafter referred to as “Urban Design”) for the preparation of a Mill Creek district-wide development plan. The City and Urban Design hereby agree as follows:

RECITALS

WHEREAS, Urban Design recently provided professional services for the preparation of an updated Downtown Master Plan (the “Plan”) for the City; and

WHEREAS, the City plans to redevelop the Mill Creek District in its Downtown urban core area; and

WHEREAS, the Mill Creek District will be a mixed-income area containing both low-income and market rate housing; and

WHEREAS, the City has the need for professional services to assist in the creation of a Mill Creek Master Plan (the “Plan”) ; and

WHEREAS, Urban Design is uniquely qualified to build upon its previous work in providing these services.

WITNESSETH

NOW THEREFORE, in consideration of the mutual promises and covenants, herein contained, the parties hereby agree as follows, to wit:

1. **Scope of Work:** Urban Design hereby agrees to provide the following services to the City of Huntsville:

Urban Design will provide design and planning consultancy services to the City of Huntsville in creating the Plan

Phase 1. In this phase of work, the Urban Design team will prepare the base information for physical site development at the same time the market analysts collect data and develop and set guidelines to determine the optimum mix, location, unit types and key strategies for mixed-income redevelopment given the Mill Creek context. Huntsville Housing Authority (HHA) and the City would confirm initiatives for infrastructure improvements, resources and facilities.

Phase 2. During this Phase, Design Associates will test alternatives for the Mill Creek District with the City of Huntsville stakeholder group to reach consensus on a preferred direction. In this phase of work, Design Associates will develop a series of 3D renderings and plan options with associated character sketches for architecture and proposed building types. The outcomes of the household-level and neighborhood needs-assessments identified in the current Mill Creek Plan will guide the housing options that are tested.

Phase 3. In this Phase of work, Design Associates will prepare a preferred Plan for the Mill Creek District with a detailed Housing Plan component that identifies building types, site plan components and parks. Design Associates will participate in meetings with the City at the beginning of the Preferred Master Plan step to confirm the housing master plan direction. the housing master plan direction.

Task 4. Design Associates will participate in a final interactive workshop with residents, stakeholders, and the neighborhoods, coordinated and hosted by the City and HHA. These meetings must occur after the 2022 Choice Neighborhoods Implementation Grant NOFA is released. Design Associates will help prepare a presentation to show how previous input has guided the process and resulted in the final Housing, Neighborhood, and People Plans. Meeting participants and community members would share which components of the plan they agree with and which they still have comments on. Design Associates will update the interactive website with opportunities for residents to provide input on the Transformation Plan.

Design Associates will provide support to the team drafting the final Transformation Plan document. Design Associates will provide supporting narratives for portions of the document related to the physical plan.

The Transformation Plan will be reviewed by all project partners and consultants. Following this process, Design Associates will issue any amended drawings and text to the document team. Two rounds of review/edits are included in Design Associates’ scope.

The Scope of Work, including deliverables is set forth more fully in Design Associates proposal dated February 16, 2022, which is attached hereto and incorporated herein by reference as Exhibit A.

2. **Period of Performance and Schedule:** Urban Design shall commence performance of the Work within ninety (90) days of the approval of this Agreement by the Huntsville City Council and shall complete according to the following schedule.

PHASE	START DATE	COMPLETION DATE
One	July 1, 2022	August 31, 2022
Two	August 1, 2022	September 30, 2022
Three	September 1, 2022	October 31, 2002
Four	October 1, 2022	November 30, 2022

3. **Contract Price:** In consideration of the services rendered hereunder, the City shall pay to Urban Design for the work performed to the Scope of Work the total amount of One Hundred Sixty Thousand Dollars (\$160,000.00). Urban Design shall invoice the City upon the completion of each phase. The City shall pay Urban Design within thirty (30) days from the date of receipt of the monthly invoice from Consultant. The following amounts shall be due at the end of each phase:

PHASE	TASK	FEES
One	Analysis & Understanding	\$ 27,450
Two	Testing Alternatives	\$ 43,700
Three	Preferred Plan Development	\$ 45,000
Four	Master Plan Document	\$ 28,260
TOTAL FEES		\$144,410
Reimbursable Expenses (Estimated)		\$ 15,590
TOTAL NTE AMOUNT		\$160,000

4. **Urban Design Associates Performing as an Independent Contractor:** In the performance of this work it is understood between the parties that Urban Design and its employees, agents, subcontractors and consultants, if any, shall be acting as independent contractors and not as an employee of the City of Huntsville. Urban Design shall have no authority to obligate the City to an indebtedness or other obligation.

5. **Notices:** All notices (a) shall be in writing, (b) shall be deemed served on the date which they are actually received, and (c) shall be served by (i) personal delivery, or (ii) United States First Class Certified or Registered Mail, Return Receipt Requested, properly addressed with postage prepaid or (iii) a nationally recognized overnight courier/delivery service (i.e. Federal Express, United Parcel Service, etc.) or (iv) electronic transmission (“E-mail”) or telephonic facsimile transmission (“Fax”) in conjunction with one of the other methods of delivery set forth in subparagraphs (i), (ii) or (iii), each addressed as follows:

City of Huntsville
 Attention: Dennis Madsen
 P.O. Box 308
 Huntsville, Alabama 35804
dennis.madsen@huntsvilleal.gov
 256-427-5101

Urban Design Associates, Ltd.
 Attention :Rob Robinson
 3 PPG Place
 3rd Floor
 Pittsburgh, PA 15222
Rob.robinson@urbandesignassociates.com
 412-263-5200

6. **Subcontracting:** Urban Design may not associate/hire/contract with any subcontractor/independent contractor/consultant in order to fulfill the requirements of this Agreement without obtaining the prior written approval of the City's Project Manager. Urban Design shall be solely responsible for any and all payments/wages/earnings due any such independent contractor for work performed thereby in furtherance of this Agreement. Urban Design shall be legally responsible for any and all actions of any subcontractor/independent contractor/consultant. Consent by the City to any subcontract shall not constitute approval of the acceptability of any subcontract price or of any amount paid under any subcontract, nor relieve Urban Design of any responsibility for performing this contract. The City's Project Manager shall have final approval of any proposed subcontractor.

7. **Confidential Information:** Each party hereto (each, a "Recipient") shall protect and keep confidential all non-public information disclosed to Recipient by the other party (each, a "Discloser") and identified as confidential by Discloser ("Confidential Information") and shall not, except as may be authorized by Discloser in writing, use or disclose any such Confidential Information during and after the term of this Agreement. These obligations of confidentiality shall not apply to information that: (1) was previously known to Recipient; (ii) is or becomes publicly available through no fault of Recipient; (iii) is disclosed to Recipient by a third party having no obligation of confidentiality to Discloser relating to such Confidential Information; (iv) is independently configured by Recipient; or (v) is required to be disclosed as a matter of law (e.g. open records request).

8. **Termination**

(1) Termination For Convenience.

This agreement may be terminated by the City without cause prior to the completion of the project upon ten (10) days written notice of the intent to terminate to Urban Design. Notice to terminate shall be given to Urban Design by written notification mailed or hand delivered to the contact address for Urban Design listed in Section 3.1 herein. In the event of such termination without cause, Urban Design shall be compensated for all services actually performed in a timely manner prior to receipt of the notice of termination provided, however, that such compensation shall be conditioned upon Urban Design providing in a timely manner to the City all documents developed and copies of the work product produced pursuant to the Contract which were performed in furtherance of the Scope or Work up to the receipt of the notice of termination. In such event, Urban Design shall promptly submit the City its invoice for final payment.

(2) Termination for Cause.

This agreement may be terminated by either party upon thirty (30) days written notice to the other should such other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination.

9. **Nonexclusiveness of Remedies.** Any right or remedy on behalf of the City or Urban Design provided for in any of these specifications, including but not limited to any guaranty or warranty or any remedy for nonperformance, shall be in addition to and not a limitation of any right or remedy otherwise available by law, equity, or statute.

10. **Injuries to Urban Design.** Urban Design is obligated to obtain sufficient liability insurance coverage (as well as worker's compensation coverage, if required by law) for the benefit of Urban Design and its agents and/or employees. Urban Design waives any and all rights to recovery from the City for any injuries that Urban Design (and/or its agents and/or employees) may sustain while performing services under this Agreement.

11. **Insurance.** Urban Design shall carry insurance of the following kinds and amounts in addition to any other forms of insurance or bonds required under the terms of the contract specifications. Urban Design shall procure and maintain for the duration of the job until final acceptance by the City, or as later indicated, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Urban Design, its agents, representatives, employees or subcontractors.

A. MINIMUM SCOPE OF INSURANCE:

1. General Liability:

Insurance will be written on an occurrence basis. Claims-made coverage will be accepted only on an exception basis after the City's express written approval.

Commercial General Liability

Products and Completed Operations

Contractual

Personal Injury

Broad Form Property Damage

2. Professional Liability:

Insurance may be written on a "claims-made" basis, providing coverage for negligent acts, errors or omissions in the performance of professional services. Coverage will be maintained for three years after completion of the professional services and Certificates of Insurance will be submitted to the City within reasonable economic terms. For purposes of this provision, reasonable economic terms shall mean that such coverage is carried by at least 25% of the firms within the discipline of concern in the United States. Such coverage shall be carried on a continuous basis including prior acts coverage to cover the subject project. The professional liability insurance shall contain contractual liability coverage.

3. Automobile Liability:

Business Automobile Liability providing coverage for all hired and non-owned autos. Coverage for loading and unloading shall be provided under either automobile liability or general liability policy forms.

4. Workers' Compensation Insurance:

Statutory protection against bodily injury, sickness or disease or death sustained by employee in the scope of employment. Protection shall be provided by a commercial insurance company or a

recognized self-insurance fund authorized before the State of Alabama Board of Industrial Relations.

5. Employers Liability Insurance:

Covering common law claims of injured employees made in lieu of or in addition to a worker's compensation claim.

B. MINIMUM LIMITS OF INSURANCE:

1. General Liability:

Commercial General Liability on an "occurrence form" for bodily injury and property damage:

\$ 2,000,000 General Aggregate Limit

\$ 1,000,000 Products - Completed Operations Aggregate

\$ 1,000,000 Personal & Advertising Injury

\$ 1,000,000 Each Occurrence

2. Professional Liability:

Insurance may be made on a "claims-made" basis subject to the terms of section 9.0(A)(2) herein:

\$ 1,000,000 per Claim

3. Automobile Liability:

\$ 1,000,000 Combined Single Limit per accident for bodily injury and property damage.

4. Workers' Compensation:

As Required by the State of Alabama Statute. Waivers of subrogation are required.

5. Employers Liability:

\$ 100,000 Bodily Injury by Accident or Disease

\$ 500,000 Policy Limit by Disease

C. OTHER INSURANCE PROVISIONS:

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverage's Only:

a. The City, its officers, employees, elected officials, agents and specified volunteers are to be covered as Additional Insureds, as their interests may appear, as respects: liability arising out of activities performed by or on behalf of Urban Design for products used by and completed operations of Urban Design; or automobiles owned, leased, hired or borrowed by Urban Design. The coverage shall contain no special limitations on the scope of protection afforded to the City,

its officers, employees, elected officials, agents or specified volunteers. Additional insured status shall be through ISO Additional Endorsement CG 20 10 11 85 or equivalent that is sufficient to provide the coverage required by this Agreement.

b. Urban Design's insurance coverage shall be primary insurance as respects the City, its officers, employees, agents and specified volunteers, as their interests may appear. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or specified volunteers shall be excess of Urban Design's insurance and shall not contribute to it.

c. Urban Design's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages:

a. Urban Design is responsible to pay all deductibles. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Cancellation of coverage for non-payment of premium will require ten (10) days written notice to the City.

b. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, employees, agents or specified volunteers.

D. ACCEPTABILITY OF INSURERS:

Insurance is to be placed with insurers with an A. M. Best's rating of no less than B+ V.

E. VERIFICATION OF COVERAGE:

The City shall be indicated as a Certificate Holder and Urban Design shall furnish the City with Certificates of Insurance reflecting the coverage required by this document. The A. M. Best Rating and deductibles, if applicable, shall be indicated on the Certificate of Insurance for each insurance policy. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

F. CONSULTANTS AND/OR SUBCONTRACTORS WORKING FOR THE CONTRACTOR:

Urban Design shall include all subcontractors and/or consultants as insureds under its policies or shall furnish separate certificates and/or endorsements for each subcontractor and/or consultant.

G. HOLD HARMLESS AGREEMENT:

1. Other Than Professional Liability Exposures:

Urban Design, to the fullest extent permitted by law, shall indemnify and hold harmless the City, its elected and appointed officials, employees, agents and specified volunteers against all claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or

resulting from the negligent performance of Urban Design's obligations under this Agreement, provided that any such claim, damage, loss or expense (1) is attributable to personal injury, including bodily injury sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, and (2) is caused by any negligent act or omission of Urban Design or any of their consultants, or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable. Such obligation should not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

2. Professional Liability:

Urban Design agrees that as respects negligent acts, errors or omissions in the performance of professional services, to indemnify and hold harmless the City, its officers, agents, employees, and specified volunteers from and against any and all claims, demands, losses and expenses including, but not limited to attorney's fees, liability, or consequential damages of any kind or nature resulting from any negligent acts, errors, or omissions of Urban Design or any subconsultants or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable.

3. Intellectual Property Rights.

Urban Design agrees to indemnify, hold harmless and defend City from and against any and all liability, losses, judgments, damages, and expenses arising from third party claims that the Products delivered by and/or Services performed by Urban Design pursuant to this Agreement infringe on or violate any patents, copyrights, or trade secrets of such third parties. This indemnification is contingent upon City providing prompt written notice of such a claim to Urban Design and granting Urban Design the sole right to defend such claim. In the event of any infringement or claimed infringement, Urban Design, in its sole discretion, shall: (i) modify the infringing Services to be non-infringing as long as there is no loss of functionality by such modification; (ii) obtain a license for City to use the infringing Services; or (iii) terminate the City's right to use the infringing Services and refund to City all amounts paid for such infringing Services, amortized over a period of (5) years from the acceptance of Services.

12. **CONSULTANT AND/OR SUBCONTRACTORS WORKING FOR THE CONTRACTOR:**

Urban Design shall require any approved subcontractors and/or consultants working for the City of Huntsville pursuant to this Agreement to carry insurance as required under this Agreement.

13. **GENERAL PROVISIONS.**

1. Governing Law and Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama without regard to Alabama conflict of laws provisions. Proper venue for any action to enforce the terms of this Agreement shall be in the state or federal courts of Madison County, Alabama.

2. Force Majeure.

Neither party shall be responsible for delays or failure of performance resulting from acts beyond the reasonable control of such party. Such acts shall include, but not be limited to, acts of God, strikes, walkouts, riots, acts of war, epidemics, failure of suppliers to perform, governmental regulations, power failure(s), earthquakes, or other disasters.

3. Headings.

The titles and headings of the various sections and paragraphs in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify or place any construction upon or on any of the provisions of the Agreement.

4. Agreement Deemed to Have Been Jointly Drafted.

The parties acknowledge that they have thoroughly reviewed this Agreement and bargained over its terms. Accordingly, neither party shall be considered responsible for the preparation of this Agreement which shall be deemed to have been prepared jointly by both parties. The provisions of the Agreement allocate the risks between the parties. The terms and conditions included herein reflect the allocation of risk, and each provision herein is a part of the bargained for consideration of this Agreement.

5. Waiver.

The failure of the City to insist in one or more instances upon the performance of any term of this Agreement is not a waiver of its right to future performance of such terms unless such waiver is in writing and signed by a duly authorized officer of the City.

6. All Amendments in Writing.

No provisions in either party's purchase orders, or in any other business forms employed by either party will supersede the terms and conditions of this Agreement, and no supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement.

7. Property of City.

All work product prepared by Urban Design shall become and be the sole property of the City.

8. Third Parties.

Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

9. Non Discrimination Policy.

In consideration of this agreement, the parties hereto for themselves, their agents, officials, employees, and servants agree not to discriminate in any manner on the basis of race, color, creed, age, sex, disability or national origin with reference to the subject matter of this agreement, no matter how remote.

10. No Assignment

Neither party shall assign its rights hereunder, excepting its right to payment, nor shall it delegate any of its duties hereunder without the written consent of the other party.

11. Survivability.

The terms of Section 11.G. entitled "Hold Harmless Agreement", shall survive termination of this Agreement.

12. Entire Agreement.

The parties have read this Agreement, including all Exhibits, and agree to be bound by its terms, and further agree that it constitutes the complete and entire agreement of the parties and supersedes all previous communications, oral or written, and all other communications between them relating to the subject matter hereof. No representations or statements of any kind made by either party, which are not expressly stated herein, shall be binding on such party. In the event any separate Statements of Work are subsequently executed by the parties and are in conflict with the provisions of this Agreement, then the provisions of this Agreement shall prevail over any such conflicting provisions. Any pre-printed terms and conditions of Urban Design's and City's business forms shall be without legal effect with respect to this Agreement or any subsequent Statements of Work.

13. Order of Precedence of Contract Documents

In the event any conflict, discrepancy, or inconsistency among any of the documents which make up this contract, the following shall control, and Urban Design is deemed to have based its estimate of performing the work upon the order of precedence as set forth below. Interpretations shall be based upon the following order of precedence: 1) this Agreement and 2) Urban Design's proposal attached hereto as Exhibit A.

IN WITNESS WHEREOF, the parties hereto, by their respective duly authorized officers or representatives, have each executed this Agreement, effective as of the date first above written.

CITY OF HUNTSVILLE, ALABAMA

By: _____

Tommy Battle

Its: Mayor

Attest: _____

Kenneth Benion

Its: Clerk Treasurer

URBAN DESIGN ASSOCIATES

By: _____

Its: _____