



3/11/2025

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## GRACE AVENUE CHURCH

Proposal for Landscape Architectural Services

222 Kemper St.  
San Antonio, TX 78207

We are pleased to submit the following proposal for Professional Services in connection with the project referenced above. This Agreement is by and between Grace Avenue Church and KW Landscape Architects (KW), a Texas corporation. KW shall provide professional services on the project generally referenced on the exhibit shown above.

**Architecture:** 1 Building, 23,000 SF, 3 Acres, 1 Courtyard

## SCOPE OF SERVICES

This proposal is based on the Site Plan dated January 2, 2025 and is the basis for the scope of this document. KW shall provide schematic design and construction documentation services. These services shall include the following:

1. Overall landscape design theme and character which will complement the proposed Architecture.
2. Front entry arrival sequence and landscape planting
3. Courtyards
4. Planting Design
5. Landscape Irrigation
6. ADA Accessibility Pathways
7. The landscape design shall meet the client's needs as well as the City/and or County's landscape requirements.
8. The scope of services and fees listed below assumes that the drawing schedule will be approximately 8 weeks from the start of the contract to the completion and issuance of construction drawings.

## PHASES & TASKS

### Task 1: Schematic Design (SD) – Courtyard Area

KW will gain a firm understanding of the project and its constraints and KW shall prepare schematic design drawings defining the general concepts of the landscape architectural design.

#### During the Schematic Design Phase KW will include:

1. Meeting with the Client to establish project goals, establish the landscape program, and confirm the scope of work. We will then have gained a firm understanding of the project scope, context,

- and objectives.
- 2. KW may conduct a site visit to familiarize the project team with the site’s existing conditions, vegetation, topography, access, and adjacent land uses.
- 3. Acquire site surveys, boundary, engineering and architectural electronic drawings from the consultant team and client.

**Deliverables:** This phase includes the production of drawings, which portray the elements of the project in effort to reach a consensus on the design and scope of the project which may include the following:

- 1. KW will attend coordination meetings with the client, relevant stakeholders, and consultant team.
- 2. Develop diagrams analyzing key project opportunities and constraints.
- 3. Development of a site plan diagram in conjunction with the Client and Design team indicating building locations, parking layout, and roadways.
- 4. Development of a schematic design in conjunction with the Client and Design team addressing the issues of pedestrian and vehicular circulation, and all other landscape elements.
- 5. The Deliverables for this phase may include:
  - SD Kick Off Meeting
    - Site Analysis.
    - Program Considerations.
    - Design Visioning.
    - Precedent Projects.
  - Program Design
    - 1-2 sketchy schemes.
  - Design Scheme
    - 1 illustrative plan, labeled.
    - Final Concept images.
- 6. KW may provide the client with up to one (1) conceptual design. Any more requested designs will be billed to the client on an hourly basis.

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<b>SD Duration/Assumptions</b>	<b>2 Meetings/Web Conferences</b>	<b>4 Weeks</b>
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## Task 2: Construction Documents (CD) – Permit Documents Only

KW shall prepare Construction Documents for the purpose of bidding and constructing the landscape scope of work.

**During the Construction Documentation phase, KW may include the following:**

- 1. KW will attend coordination meetings with the client.
- 2. KW shall prepare construction drawings and technical sections of specifications to reasonably conform to applicable codes and regulations of governmental bodies having jurisdiction over the work at the time of preparation.
- 3. During the development of the construction drawings and technical sections of specifications, KW shall use its best efforts to coordinate its services with those of other consultants.
- 4. Prepare tree preservation and mitigation plans and details
- 5. Layout Plans: For all landscape site scope and for coordination of landscape scope by consultant team.

6. Construction Details: Construction detailing to include softscape, landscape grading and drainage, and any specialty features that are a part of the landscape scope.
7. Grading and Drainage Plans (as needed): soft area contouring and mounding and direction of runoff. KW will work with the Civil Engineer to coordinate landscape area drain fixtures. All drainage and water run off calculations and all underground drainage and utilities are to be provided by the Civil Engineer.
8. Planting Plans: All trees, palms, shrubs, ground covers, planters (pottery) and vines, indicating size, quality, and cultivar where applicable and planting techniques.
9. Irrigation Plans: Based upon water agency capacity and data, the landscape irrigation drawings will include system design for source access and control, mainline and lateral zone, piping, hydraulic calculations, water distribution and distribution device layout.
10. This phase assumes two (2) consolidated submissions: Issued for Bid and Permit, and Issued for Construction. Any additional submissions will be billed to the client on an hourly basis.

*Any changes to the plan after Issued for Bid will be billed to the Client as an additional service. These services will be billed on an hourly basis.*

**Deliverables:** This phase includes the production of drawings and documents that can be used for permitting and construction; they may include the following:

1. Cover Sheet and Drawing Index
2. Planting Plans and Details
3. Irrigation Plans and Details

**Exclusions:**

*Fountain/ Pool, Structural, Mechanical, Electrical And Plumbing (MEP) And Structural Engineering and Water Proofing KW Will Review Submittals From Fountain/Pool Sub-Contractor For Design Intent Only.*

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**CD Duration/Assumptions**

**2 Meetings/Web Conferences**

**4 Weeks**

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**TASK 3: PERMITTING**

Prepare documents suitable for review for compliance with applicable city of county requirements and assist in the permitting submission process.

**City of San Antonio Landscape Permitting Fee:**

- A. Tree preservation requirements are determined based on the type of development and require a percentage of contiguous tree canopy to be preserved. If not met, mitigation must be performed.
- B. Open Space requirements are determined based on the zoning and type of development and require a portion or percentage of the site to remain open and undeveloped.
- C. Buffer requirements are based on adjacent land uses and certain site features. KW to determine which ones apply and what is needed to meet requirements. Also, certain site features may require buffer requirements.
- D. Overall Tree Canopy requirements are determined based on the total site area, zoning and type of development. A portion or percentage of the site is required to meet minimum canopy coverage totals.

- E. Parking lot shading requires a percentage of the total parking lot area to have shade trees. Different tree species are worth different points, which are then used to calculate total shade value.

**During the permitting phase KW will:**

1. Determine which existing trees we will preserve or remove.
2. Determine required amounts of open space
3. Determine required buffers
4. Determine required amount of parking lot shading
5. Prepare plans and documentation in support of trees being removed.
6. Prepare plans and calculations to show we are fulfilling mitigation, open space, buffer, and parking lot requirements.
7. Coordinate with the City reviewers.

**Deliverables:** The tasks above include the production of drawings and documents that can be used for permitting; including:

1. Cover Sheet and Drawing Index
2. Overall Site Plan
3. Tree Mitigation Plans
4. Ordinance Planting Plans
5. Calculations

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**Permitting Duration/Assumptions**

**2 Meetings/Web Conferences**

**3 Weeks**

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## CLIENT’S RESPONSIBILITIES / EXCLUSIONS TO THE SCOPE OF SERVICES

The Client shall provide the following information or services as required for performance of the work. KW assumes no responsibility for the accuracy of such information or services and shall not be liable for error or omissions therein. Should KW be required to provide services in obtaining or coordinating the compilation of this information, such services shall be charged as Additional Services.

- A. Any service not specifically listed under the Scope of Services listed in this document.
- B. Client requested revisions to the plans after the issuance of 100% Construction Drawings. (Any changes will be billed on an hourly basis.
- C. Rezoning documentation, rezoning renderings, and entitlements.
- D. Submittals and coordination for tree removal permits and tree mitigation plans.
- E. Topography and boundary survey.
- F. Legal descriptions of property.
- G. Soils testing and/or engineering.
- H. Existing site engineering and utility base information.
- I. Overhead aerial photographs at controlled scale.
- J. Submittals to agencies having jurisdiction over the work other than the landscape architecture scope.
- K. Changes to the documents after approval or for value engineering purposes.
- L. Payment of permit review, applications, processing, and impact fees.

- M. Any type of graphic design unless described in the Scope of Services.
- N. The Client shall be responsible for Bidding, Contract Requirements, and General Conditions of the specifications.
- O. The Design of Scope Items shall not include structural provisions for support of such items in the structure of the building; penetrations of the structure of the building for structural, mechanical, electrical or plumbing connections; actual connection to structural, mechanical, electrical and plumbing systems of the building (other than point-of-connections); waterproofing of the structure or protective covering of that waterproofing; or waterproofing of penetrations of the structure.
- P. This proposal excludes all aspects of **civil, structural, mechanical, electrical, and environmental engineering, architectural design, any waterproofing design, and graphics and signage design**. All water feature engineering is the responsibility of the design-build contractor.
- Q. Fountain/ Pool, Civil, Structural, Mechanical, Electrical, Plumbing (MEP) engineering and any form of Water Proofing. KW will review submittals from fountain/pool sub-contractor for design intent only. The pool contractor shall provide related design and technical specifications for pumping, piping, water treatment, water chemistry, structural design, electrical engineering and safety features of the pool and water feature shells, electrical design of mechanical systems including all wiring and control diagrams, motor control centers, chemical monitoring and control systems and underwater lighting.
- R. KW will assist the Client and Design Team with preparing drawings and documents for permitting and approvals. The responsibility for submittal of the permit package will be by the Client and/or others. The Client shall be solely responsible for securing all such approvals.
- S. Certified property survey including boundary, topography, aerial photographs and existing conditions, and features, as well as site conditions including public utilities, geographic conditions, rights of way, restrictions, easements, deed restrictions, environmental impact reports, etc.
- T. All survey data and existing design documentation will be provided to KW in electronic file format compatible with Autodesk Software.
- U. The Client will provide all necessary development program, budget and schedule information for the project.
- V. Excluded Services are not a part of Landscape Architect's Basic or Additional Services and are the responsibility of others. Excluded Services include, but are not limited to, the following: Subsurface conditions, soil issues, soil content, level of compaction, drainage; utilities' locations, structural or mechanical engineering, or any form of waterproofing.
- W. This proposal is valid for a period of 90 days. Beyond that period, KW reserves the right to review and revise its content.

## COMPENSATION SUMMARY

KW proposes to provide the above-described landscape and hardscape design services for the following lump sum to be billed monthly, based on percentage of work complete as follows:

DESCRIPTION	PERCENTAGE
Concept/Schematic Design	100%
<b>Landscape Fee</b>	<b>\$12,000</b>



Changes to Construction Documentation After 100% CD Issued.

Hourly

**PERMITTING FEES**

Permitting	\$7,500	<i>Variance requests &amp; coordination not included.</i>
<b>Total Permitting Fee</b>	<b>\$7,500</b>	

**Total Fees \$19,500**

**3D Marketing Level Images \$9,500** *Additional Optional Fee*  
 Deliverable: 5 Images

**HOURLY RATES**

If ever applicable, hourly rates shall be based on our Hourly Rate Schedule as follows:

Partner	\$250	Irrigation Design	\$150
Director	\$225	Coordinator	\$125
Senior Executive	\$200	Associate	\$120
Executive	\$175	Admin. Associate	\$80
Manager	\$150		

KW shall issue monthly invoices for professional services. Client shall pay amounts that are due not more than thirty (30) days after the date of Client’s receipt of a valid statement. Amounts properly due yet unpaid after the expiration of forty-five (45) days after Client received KW’s valid statement shall bear simple interest at an annual rate of eight percent (8%), unless otherwise limited by law. Each monthly invoice shall include an accounting of:

1. The portion of the Basic Compensation earned by KW during the period covered by the invoice.
2. All Reimbursable Expenses incurred by KW during the period covered by the invoice.
3. All Extra Services earned by KW during the period covered by the invoice.

**ADDITIONAL SERVICES**

1. The Client is responsible for all design direction and approval of the project budget at the end of every task. Any redesign or scope change made after the design approval for that phase was granted will be billed as add services.
2. Additional services shall be considered for those services related to scope of work changes (project size, phasing, area, complexity and budget increases by more than 10% between the time of approval of the landscape concept phase and the time of award of a construction contract) or such changes are inconsistent with or those services which are in addition to the Scope of Services outlined in this Agreement.
3. If the project duration has been extended beyond the project schedule established during the Schematic Design Phase
4. Any additional meetings or presentations requested beyond those noted above in the Meetings and Site Visits section.
5. Variance plans, if not previously negotiated and specified in the original proposal fee as described above.

## REIMBURSABLE EXPENSES

Expenses that are required for the performance of the work shall be billed to the Client monthly with a 15% markup.

**These expenses shall include, but are not limited to the following:**

1. Prints of drawings as required to perform the work or for the information of the Client and/ or other consultants.
2. Use of reprographic services for enlargements, reductions, or reproduction of drawings.
3. Computer Plotting.
4. Mail, Courier, or Overnight delivery services.
5. Special supplies unique to the performance of this work.
6. Mounting or laminating of drawings.
7. Automobile travel at \$0.70 a mile.
8. Transportation, airline tickets, rental cars.

The Terms and Conditions of this Agreement are set forth in Attachment 1 attached hereto and made a part hereof. By execution of this Agreement, the Client acknowledges that it has been informed, has read, and fully understands and consents to the Terms and Conditions.

If the terms of the attached agreement are acceptable to you, please sign and return an executed copy to our office. KW Landscape Architects appreciates the opportunity to assist you with this project.



# TERMS AND CONDITIONS

## ATTACHMENT 1—STANDARD TERMS & CONDITIONS

CLIENT agrees to engage KW Landscape Architects (“KW”) to provide professional Landscape Architectural services in connection with CLIENT’s project (“Project”) as described in the PROPOSAL. This Agreement consists of two parts: (1) the Proposal; and (2) these Standard Terms & Conditions. Nothing in this Agreement shall create a contractual relationship with, or any cause of action in favor of, any individual or entity not a party to this Agreement.

This Agreement represents the entire and integrated agreement and supersedes any prior negotiations, representations or agreements. This contract is between the CLIENT and KW, Inc. This Agreement shall become effective upon its execution by CLIENT or when CLIENT provides written authorization to KW to begin its work. If the Agreement is not executed by CLIENT within thirty (30) days of the date tendered by KW, it shall become invalid unless: (1) KW extends the time in writing; or (2) at the sole option of KW, KW accepts CLIENT’s oral authorization to proceed with the services, in which event the terms of the oral authorization shall be presumed to include all the terms of this Agreement. KW’s performance of the services under the oral authorization shall be in reliance on the inclusion of all the terms of this Agreement in the oral authorization.

## LANDSCAPE SERVICES

- 1) KW will perform its services as expeditiously as is consistent with the standard of care and diligence normally practiced by recognized professional landscape architectural firms in performing services of a similar nature, in the same locality of the Project site, under similar circumstances. KW makes no (and indeed disclaims all) warranties or guarantees, expressed or implied, with regard as to the quality of the services performed, or work product provided under this Agreement.
- 2) The services provided by KW are purely professional services, the essence of which is the providing of advice, judgment, opinion, or similar professional skill. KW shall perform the services within a timely manner consistent with sound professional practices.
- 3) Evaluations of CLIENT’s budget, or estimates of Project costs prepared by KW, if any, represent KW’s judgment as a professional engineer. It is recognized that KW has no control over the cost of labor or materials, contractors’ methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, KW cannot and does not warrant or represent that bids or negotiated priced will not vary from CLIENT’s budget or KW’s cost estimates, and CLIENT expressly agrees that KW shall have no liability for any failure of bids or actual construction costs to comply with CLIENT’s budget or KW’s cost estimates.
- 4) Job Site Visits. If included in the Proposal or Client Letter, KW shall visit the Project site as described in the Proposal as appropriate to the stage of construction to become generally familiar with the progress and quality of the work referable to KW’s scope and to determine, in general, if such work is generally consistent with the documents prepared by KW. KW will not make exhaustive or continuous observations to check the quality or quantity of the work and KW shall not be liable for construction defects or deficiencies. If included in the Proposal, KW will notify CLIENT of known or observed defects and deficiencies.

## CLIENT RESPONSIBILITY

- 1) CLIENT represents and warrants that it is financially solvent, able to pay its debts as they become due, and possesses sufficient working capital to perform its obligations under this Agreement.
- 2) CLIENT shall provide KW the following:
  - a) CLIENT’s criteria and requirements for the Project;
  - b) Right-of-entry and access for KW to enter upon the
  - c) Project site whether upon Public or private property;
  - d) All information available to or known by CLIENT which may be required by KW in performing our services;
  - e) If applicable, CLIENT will provide architectural backgrounds as AutoCAD 2010 drawing files or Building Information Models (BIM) to KW for its use in the preparation of KW’s documents. Such backgrounds shall be in form and detail suitable for direct use by KW;
  - f) Timely examination and prompt responses to KW’s submittals, construction management documentation, and other correspondence;
  - g) Direct payment of Project-related submittal and review fees over \$200.00; and
- 3) KW shall be entitled to rely upon the accuracy of the information and documentation provided by CLIENT and CLIENT’s other consultants.
- 4) CLIENT shall coordinate the services of its own consultants with those services provided by KW.

## CHANGES IN THE SCOPE OF SERVICE

- 1) If CLIENT makes changes to the scope of services shown in the Client Letter or Proposal attached hereto, or if unknown or unforeseen conditions are encountered in the field, which causes an increase in the cost for performance of the services hereunder, then a mutually agreed upon adjustment in fee should be made and reflected in an “Amendment,” to be executed and/ authorized by CLIENT.
- 2) In the event work is ordered verbally by CLIENT or his representative or agent and/or if immediate services are required to respond to construction issues on behalf of CLIENT or the Project, additions will be considered authorized and will be billed on a time basis and CLIENT will be responsible for payment.

## TERMINATION

- 1) Either Client or Landscape Architect may terminate this Agreement upon seven days written notice.
- 2) If terminated, Client agrees to pay Landscape Architect for all Basic and Additional Services rendered and Reimbursable Expenses incurred up to the date of termination.
- 3) Upon not less than seven days written notice, Landscape Architect may suspend the performance of its services if Client fails to pay Landscape Architect in full for services rendered or expenses incurred. Landscape Architect shall have no liability because of such suspension of services or termination due to Client’s nonpayment.
- 4) Any change of address for Landscape Architect or Client must be updated within ten (10) days to all parties to this Agreement, and receipt of such change of address must be confirmed, either by certified mail, return receipt, or by facsimile confirmation to ensure that the change of address has been received.
- 5) All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile or electronic transmission as follows:





# TERMS AND CONDITIONS

## To Landscape Architect at:

Darin Weinheimer  
KW LANDSCAPE ARCHITECTS  
6925 Portwest Dr, Suite 100  
Houston, Texas 77024

## To Client at:

John Shannon  
Grace Avenue Church  
222 Kemper St.  
San Antonio, TX 78207

## DISPUTE RESOLUTION

- 1) Client and Landscape Architect agree to mediate claims or disputes arising out of or relating to this Agreement before initiating litigation. The mediation shall be conducted by a mediation service acceptable to the parties. A party shall make a demand for mediation within a reasonable time after a claim or dispute arises, and the parties agree to mediate in good faith. In no event shall any demand for mediation be made after such claim or dispute would be barred by applicable law. Mediation fees shall be shared equally.

## USE AND OWNERSHIP OF DOCUMENTS

- 1) All documents including drawings, estimates, specifications, field notes and data prepared by KW for the Project are Instruments of Service for use solely with respect to this Project, and KW shall retain all common law, statutory and other reserved rights, including the copyright. By execution of this Agreement, and contingent upon payment in full for all services rendered, grants to CLIENT a limited, nonexclusive, and revocable license to use the Instruments of Service for purposes of constructing, using, and maintaining the Project. Any reuse without specific written consent and verification or adaptation by KW will be at CLIENT's sole risk and without liability or legal exposure to KW. Any such consent and verification or adaptation—granted at KW's sole discretion—shall entitle KW to further compensation rates to be agreed upon by CLIENT and KW. In the event of non-payment of more than 30 days, the license granted by this section shall be automatically revoked.
- 2) If documents are provided to Client, Client's contractor, or Client's other consultants by KW in electronic media, such as CAD files or other native format, CLIENT agrees that this is solely as a convenience, and may not be relied on in the same manner as the signed, sealed documents; nor are such electronic files represented to be accurate and faithful representations of the signed, sealed documents. KW makes no representations or warranties regarding the accuracy, completeness, or readability of information contained in electronic media files.

## GENERAL PROVISIONS

- 1) This Agreement is governed by the Laws of the State of Texas.
- 2) This Agreement is the entire and integrated agreement between Client and Landscape Architect and supersedes all prior negotiations, statements or agreements, either written or oral. The parties may amend this Agreement only by a written instrument signed by both Client and Landscape Architect.

- 3) In the event that any term or provision of this Agreement is found to be unenforceable or invalid for any reason, the remainder of this Agreement shall continue in full force and effect, and the parties agree that any unenforceable or invalid term or provision shall be amended to the minimum extent required to make such term or provision enforceable and valid.
- 4) Neither Client nor Landscape Architect shall assign this Agreement without the written consent of the other.
- 5) Irrespective of any other term in this Agreement, Landscape Architect shall not control or be responsible for construction means, methods, techniques, schedules, sequences or procedures; or for construction safety or any other related programs; or for another parties' errors or omissions or for another parties' failure to complete their work or services in accordance with Landscape Architect's documents.
- 6) Client understands and acknowledges that the design and construction process for this Project poses certain risks to both Landscape Architect and Client. Client further understands and acknowledges that the amount of risk that Landscape Architect can accept is tied, in part, to the amount of compensation received for services rendered. Landscape Architect's fee for the services offered is based on Client's agreement to limit Landscape Architect's liability as described below. Client further acknowledges that were it not for this promise to limit Landscape Architect's liability, Landscape Architect's compensation would need to increase to address the risks posed by this Project. Client, therefore, acknowledging its right to discuss this provision with legal counsel experienced in the design and construction process, as well as other design professionals, voluntarily agrees that, to the fullest extent permitted by law, Landscape Architect's total liability to Client for any and all injuries, claims, liabilities, losses, costs, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any cause or causes including, but not limited to, Landscape Architect's negligence, errors, omissions or breach of contract, shall not exceed the amount of the total compensation received by Landscape Architect under this Agreement. This limitation of liability shall apply to Client's direct claims and Client's claims arising from third parties. Should any legal proceeding be commenced between the parties to this Agreement seeking to enforce any of its provisions, including, but not limited to, fee provisions, the prevailing party in such proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorneys' and expert witnesses' fees, which shall be determined by the court or forum in such a proceeding or in a separate action brought for that purpose. For purposes of this provision, "prevailing party" shall include a party that dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.
- 7) Client and Landscape Architect waive consequential damages for any claims, disputes or other matters in question arising out of or relating to this Agreement Landscape Architect's waiver of consequential damages, however, is contingent upon the Client requiring contractor and its subcontractors to waive all consequential damages against Landscape Architect for claims, disputes or other matters in question arising out of or relating to the Project.
- 8) To the extent damages are covered by property insurance during construction, Client and Landscape Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for such damages. Client or Landscape Architect, as appropriate, shall require of the contractors,

consultants, agents and employees of any of them similar waivers in favor of the other parties described in this paragraph.

- 9) Client acknowledges and agrees that proper Project maintenance is required after the Project is complete. A lack of or improper maintenance in areas may result in damage to property or persons. Client further acknowledges and agrees that, as between the parties to this Agreement, Client is solely responsible for the results and/ or consequences of any lack of or improper maintenance.
- 10) Nothing in this Agreement shall create a contractual relationship for the benefit of any third party.
- 11) If this Agreement is not signed and returned to Landscape Architect within ten (10) business days, the offer to perform the described services may, in Landscape Architect's sole discretion, be withdrawn and said offer shall then be null and void.
- 12) For purposes of interpretation of the meaning of any clause, phrase or paragraph of this Agreement, both parties to this Agreement acknowledge having had input in the drafting of this agreement. This Agreement shall not therefore be interpreted for or against either party because of that party or its counsel having drafted the Agreement.

## ASBESTOS/POLLUTION

- 1) KW has not been retained or compensated to provide design and/or construction review services in the abatement, replacement, locating, identification, removal or detection of any product, material or process containing asbestos; or the discharge, dispersal, release, escape or treatment of pollutants. Pollutants may mean any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes materials to be disposed of, recycled, reconditioned or reclaimed. The CLIENT agrees that KW shall have no liability to CLIENT or to others for any claims, suit actions, liabilities, losses, damages and expenses, including reasonable attorneys' fees, arising from the presence of asbestos in the Project or in materials used in the construction or modification of the Project and arising from the presence of pollutants in the Project or materials used in the construction or modification of the Project.

## CLAIMS

- 1) Risk Allocation. KW will be responsible only for its own work, and not for defects in the work designed or built by others, including without limitation CLIENT's contractor(s) or other consultants. KW shall not be responsible for consequential damages to either CLIENT or any other member of the construction team, including without limitation damages for construction inefficiencies or for delays in construction.
- 2) Claims for Consequential Damages. CLIENT and KW mutually waive claims for consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement, including without limitation the following categories of damages: lost profits; loss of rental income; rental expenses; interest expenses; and loss of financing. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.
- 3) Force Majeure. Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the reasonable control of the other party, its employees or agents.
- 4) Property Insurance. CLIENT agrees to procure, or cause to be procured, property insurance written on a builder's risk "all-risk" or

- equivalent policy form in the amount of the construction costs, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained until final completion of the Project, or until no person or entity other than CLIENT has an insurable interest in the Project, whichever is later. This shall name KW as an additional insured. CLIENT further agrees to waive all rights against KW for damages that are, or could have been, covered by property insurance and such waiver of subrogation shall be effective notwithstanding any duty of indemnity, contractual or otherwise.
- 5) Insurance. During the term of this Agreement, KW shall maintain insurance in connection with KW's Services with limits of not less than those listed below:
    - a) Professional Liability - \$2,000,000/ \$4,000,000
    - b) Commercial General Liability - \$2,000,000/ \$4,000,000
    - c) Business Automobile Liability - \$1,000,000 combined, single limit
    - d) Workers Comp \$1,000,000
  - 6) If requested, the KW will furnish CLIENT a certificate evidencing that the required insurance is in effect. Insurance carried by special consultants will be subject to the approval of both KW and Client. If the CLIENT requests KW to obtain insurance that exceed the types and limits set forth above, the CLIENT shall reimburse KW for any additional cost.

## ASSIGNMENT

- 1) CLIENT may not delegate, assign, sublet or transfer its duties or interest in this Agreement without the written consent of KW. KW may delegate, assign, sublet or transfer its duties hereunder without the written consent of CLIENT, but KW shall be made responsible for the completion of its duties. KW may not delegate, assign or transfer its interest in this Agreement without the written consent of CLIENT.

## INDEMNITY PROVISION

CLIENT AGREES TO INDEMNIFY, DEFEND AND HOLD LANDSCAPE ARCHITECTS HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, SUITS, DEMANDS, LOSSES, COSTS AND EXPENSES, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND ALL LEGAL EXPENSES AND FEES INCURRED THROUGH APPEAL, AND ALL INTEREST THEREON, ACCRUING OR RESULTING TO ANY AND ALL PERSONS, FIRMS OR ANY OTHER LEGAL ENTITIES ON ACCOUNT OF ANY DAMAGES OR LOSSES TO PROPERTY OR PERSONS, INCLUDING INJURIES OR DEATH, OR ECONOMIC LOSSES, ARISING OUT OF THE PROJECT AND/OR THIS AGREEMENT, EXCEPT THAT THE LANDSCAPE ARCHITECT SHALL NOT BE ENTITLED TO BE INDEMNIFIED TO THE EXTENT SUCH DAMAGES OR LOSSES ARE FOUND BY A COURT OR FORUM OF COMPETENT JURISDICTION TO BE CAUSED BY LANDSCAPE ARCHITECT'S NEGLIGENT ERRORS OR OMISSIONS.

## PAYMENT

- 1) Invoices will be submitted in our standard format on a monthly basis or at the completion of work.
- 2) CLIENT will pay KW in accordance with the current KW Proposal and the Professional Service Agreement attached hereto and are due on receipt. If CLIENT is any entity other than the owner (e.g. Architect or other Consultant), then payment is due within 3 business days of CLIENT's receipt of funds from the owner, or the entity responsible for payment to CLIENT. Notwithstanding the foregoing, KW reserves



# TERMS AND CONDITIONS

the right, in its sole discretion, to suspend or terminate this Agreement if invoices have not been paid within 60 days, without further liability to CLIENT.

- 3) KW reserves the right to include an amount up to the maximum allowed by law for interest charges. If for any reason we are forced to turn your account over for collection, to an attorney or collection agency, or if collected through legal proceedings, then you will be obligated to pay any and all costs of collection, including agency fees, attorney fees, and court costs.
- 4) Preparation of customized invoice formats will be charged on a time-and-materials basis in accordance with KW's current fees.
- 5) CLIENT will reimburse KW for expenses incurred by KW for the Project, in addition to KW's fees, as set forth in the KW Proposal including, but not limited to all sales, use, excise, value-added, gross receipts, or similar taxes. As provided elsewhere, CLIENT shall be responsible for the direct payment of any Project-related expense, reimbursable, submittal, or review fee that is in excess of \$200.00.

**ACCEPTED BY:**

Company Name Grace Avenue Church

Signature \_\_\_\_\_


Printed Name John Shannon

Title Project Manager

Date \_\_\_\_\_

**SUBMITTED BY:**

Company Name KW Landscape Architects

Signature 

Printed Name Darin Weinheimer, PLA

Title Founding Partner

Date \_\_\_\_\_