

The City of Lewisville
PRE-APPROVED BACKYARD COTTAGE PROGRAM
MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“Agreement” or “MOA”) is made and entered into by and between The City of Lewisville (“the City”), Texas and _____ [firm name], a _____ (“Designer”) with regard to their design entitled _____ (the “Design”).

RECITALS

WHEREAS, to simplify and streamline permitting of backyard cottages, the City developed a program (“Program”) to pre-approve backyard cottage design plans, the “City of Lewisville Pre-Approved Backyard Cottage Design Program Guidelines for Architects/Designers” (“Guidelines”); and

WHEREAS, the City invited designers, architects, and firms (“Designers”) to submit full permit-ready backyard cottage designs that fulfill certain criteria as described in the City’s Guidelines; and

WHEREAS, Designer submitted its Design for consideration by the City; and

WHEREAS, the City found the Design submitted by the Designer to meet all applicable standards as outlined in the Guidelines and Designer would like to participate in the City’s Program; and

WHEREAS, the purpose of this MOA is to define the non-financial, mutual relationship between the City and the Designer within the Program with regard to the Design.

NOW, THEREFORE, in consideration of the mutual terms, conditions, obligations and covenants contained herein, the City and Designer mutually agree as follows:

AGREEMENT

1. TERM OF THE AGREEMENT. The term of this Agreement shall be effective when last signed by an authorized representative of each party and shall terminate upon removal of the Design from the Online Gallery (hereinafter defined) for any reason, unless terminated sooner as provided for herein. Either party may terminate this Agreement at any time upon written notice to the other party. Termination of this MOA shall cause immediate removal of this Design from the Online Gallery (hereinafter defined).

2. PROGRAM REQUIREMENTS.

a. Ongoing Compliance of Designs with Guidelines and Applicable Standards. Designer acknowledges that its Designs must continue to meet all City zoning, land use, building, and other code requirements and all applicable local, state, and federal standards. In addition, Designer further acknowledges that the City’s code requirements

periodically change and the City may remove a Design from the Online Gallery (hereinafter defined) as provided for in the Guidelines.

b. Online Gallery. Pre-approved Designs will be showcased in an online gallery on the City's website (the "Online Gallery"), with images of the Design, a description of the design, and information about the Designer as more fully outlined in the Guidelines. This information will be provided by the Designer. Designer shall provide City updated information, in writing, within 7 days of any changes to the information provided in the Application, which changes shall be made as provided for in the Guidelines. Members of the public can browse the gallery, choose a design, and connect with Designer to proceed with any necessary steps (e.g., purchase of the license and any necessary site planning) to create a complete backyard cottage permit application. The City reserves the right to remove any pre-approved Designs from the online gallery for any reason, including, but not limited to, if the Designer violates the terms of the Guidelines or this MOA. If a Design is removed from the online gallery, the Designer will be notified in writing as provided for in this MOA.

c. Compensation for Designers. Pre-approved Designs are intended to offer a simplified to permit a Backyard Cottage. The use and licensing of all designs is a private agreement between Designer and an interested homeowner.

d. Intellectual Property License. For materials and documents prepared by Designer in connection with the Design(s), Designer shall retain the copyright and any other intellectual property rights (including the right of reuse) whether or not the Design(s) is(are) completed. Designer grants to the City a non-exclusive, irrevocable, unlimited, royalty-free license to use every document and all other materials prepared by the Designer to the extent necessary for City to review and showcase the Design information outlined in the Guidelines in an online gallery, and any other related actions contemplated by this MOA. The City may make and retain copies of such documents for its information and reference in connection with this MOA and the Program. The foregoing license shall terminate upon termination of this MOA, provided that the City shall be able to maintain copies in accordance with its typical record retention policies and nothing herein prevents the City from complying with all requirements of the Texas Public Information Act with regard to any documents in its possession at the time of a request made under that Act. Designer does not represent or warrant that such documents are suitable for reuse by the City, or others, or on any other project. Designer represents and warrants that it has all necessary legal authority to make the assignments and grant the licenses required by this Section.

e. RELEASE AND INDEMNITY. THE DESIGNER AGREES TO DEFEND, INDEMNIFY AND HOLD CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY DESIGNER'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR

FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY DESIGNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE DESIGNER AND CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE DESIGNER'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. THE FOREGOING RELEASE AND INDEMNITY SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

f. Notice. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by e-mail or by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same, to the address thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to City:

Michele Berry
Planning Manager, City of Lewisville
PO Box 299002
Lewisville, TX 75209 9002

planning@cityoflewisville.com

If to Designer:

3. **ASSIGNMENT.** This MOA may not be assigned by either party without

the written consent of the other party.

4. AMENDMENTS. This MOA may not be modified or amended other than by a written document executed by both parties, nor shall any waiver of any right or remedy of the City be valid unless in writing and signed by the City.

5. GOVERNING LAW. This MOA is governed by the laws of the State of Texas. Exclusive venue for any dispute arising out of this MOA is in Denton County, Texas.

6. ARBITRATION. In the event of a dispute which may arise under this MOA, the City does not agree to arbitration.

7. SEVERABILITY. In case any one or more of the provisions contained in this MOA shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this MOA shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

8. REPRESENTATIONS. Each signatory represents this MOA has been read by the party for which this MOA is executed and that such party has had an opportunity to confer with its counsel.

9. MISCELLANEOUS DRAFTING PROVISIONS. This MOA shall be deemed drafted equally by all parties hereto. The language of all parts of this MOA shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this MOA are for the convenience of the parties and are not intended to be used in construing this document.

10. CLOSURE. By signature below, the parties to this MOA hereby bind themselves to the terms stated herein, including all attachments referred to herein.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date last listed below.

Designer:

Name

Date

Title and firm

City:

Name

Date

Planning Director