



Court's Ex. **012**

Case # 37-2017-00010073-CU-BC-CTL

Rec'd _____

Dept. **C-73** Clk. _____

AGREEMENT BETWEEN OWNER AND DESIGN FIRM

Project: 6176 Federal Blvd.
Conversion of Commercial Building into MMCC

Introduction to Agreement

Agreement made as of the 4th day of October in the year of 2016.

Between the **Owner**, Rebecca Berry of 5982 Gullstrand Street, San Diego, CA 92122 and the **Design Firm** TECHNE, located at 3956 30th Street, San Diego, CA 92104.

For the following **Project**: The Project consists of the conversion of an existing single story commercial building into a Medical Marijuana Consumer Cooperative. The existing office building has an area of approximately 918sf of permitted construction with various apparently unpermitted additions and is located on a site with an approximate size of 6,049. The building is addressed as 6176 Federal Blvd, San Diego, CA 92114.

The scope of the project is to include the following:

- A. Modification of existing built structures in order to accommodate additional parking.
- B. Conversion of approximately 1,500sf of the existing structures into a Medical Marijuana Consumer Cooperative.

The Owner and Design Firm agree as set forth below:

Article A: Services

A 1.0 Design Firm's Basic Services

A. 1.1 Areas of Professional's Basic Services.

Unless revised in a written addendum or amendment to this Agreement, in planning, designing and administering construction or rehabilitation of the Project, the Design Firm shall provide the Owner with professional services in the following areas:

- Design Services
- Construction Phase Services

A. 1.2 Phases and Descriptions of Basic Services.

A. 1.2.1 Schematic Design/Preliminary Study Phase (Conditional Use Permit)

After the execution of this agreement by the Owner, the Design Firm shall prepare and deliver Schematic Design/Preliminary Study Documents. These documents shall consist of a presentation of the concept of the Project, including all major elements of the space planned to promote economy both in construction and in administration and to comply with current program and cost limitations. The Design Firm shall revise these documents a maximum of two (2) times consistent with the requirements and criteria established by the Owner to secure the Owners written approval. The Design Firm shall also submit the following drawings and documents to the Owners for approval:

- Schematic Floor Plans (existing and proposed)
- Schematic Site Plan
- Security Plan
- Lighting Plan
- Egress Plan
- Boards and or other material as necessary for public hearings.

During this phase, the Design Firm shall coordinate the submittal of the Conditional Use Permit including incorporating the work of any necessary consultants.

A. 1.2.2 Design Development Phase.

After receipt of written approval of Schematic Design/Preliminary Study Documents, the Design Firm shall prepare and submit to the Owner Design Development Documents. The Design Firm shall revise these documents a maximum of two (2) times consistent with the requirements and criteria established by the Owner to secure the Owner's written approval. These documents shall include the following:

- Proposed Floor Plans
- Proposed Interior Elevations
- Materials concept

A. 1.2.3 Construction Document Phase.

After receipt of the Owner's written approval of Design Development Documents, the Design Firm shall prepare Construction Documents. These documents shall include:

- General Conditions
- Plans and Specifications

A.1.2.4 Construction Phase Services.

The Design Firm shall provide the following services during the construction of the project:

- Review and approve contractor's shop drawings and other submittals for conformance to the requirements of the contract documents.

- Monitor the quality and progress of the work (bi-weekly) and furnish a written field report.
- Make modifications to Construction Contract Documents to correct errors, or clarify intent.
- Make modifications to the Construction Contract Documents to accommodate change orders.
- Make recommendations to Owner for solutions to special problems or changes necessitated by conditions encountered in the course of construction.
- Promptly notify Owner in writing of any defects or deficiencies in the work or of any matter of dispute with the Contractor.
- Negotiate, prepare cost or price analysis for and countersign change orders.

A.1.2.5 Coordination of Consultants

The Design Firm shall coordinate and incorporate the work of all necessary consultants into the complete set of drawings.

We anticipate the the following consultant’s will be necessary:

- Surveyor
- T-24 consultant
- Structural Engineer
- MEP Engineering

A. 2.0 Design Firm's Additional Services

A. 2.1 Description of Additional Services.

Additional Services are all those services provided by the Design Firm on the Project for the Owner that are not defined as Basic Services in Article A, Section 1.2 or otherwise required to be performed by the Design Firm under this Agreement. They include revisions in the scope of work of previously approved drawings, specifications and other documents due to causes beyond the control of the Design Firm and not due to any errors, omissions, or failures on the part of the Design Firm to carry out obligations otherwise set out in this Agreement.

A. 2.2 Written Addenda or Contract Amendment.

All additional services not already expressly required by this agreement shall be agreed to through either a written addendum or amendment to this Agreement.

Article B: Compensation and Payment

B. 1.0 Basic Services.

B. 1.1 Fee for Basic Services.

The Owner will pay the Design Firm for Basic Services performed as defined by A.1.2 fees as follows:

Schematic Design/Preliminary Study Phase (up until the CUP submittal is deemed complete):

Fixed Fee: \$8,500

CUP Processing:

Hourly Fee: \$140/hr

Design Development Phase:

Fixed Fee: \$3,500

Construction Document Phase:

Fixed Fee: \$21,000

Construction Phase Services

Hourly Fee: \$140/hr for project manager/designer, \$95/hr for draftsman

B. 1.2. Payment Schedule.

Progress payments for Basic Services for each phase of work shall be made no more often than monthly in proportion to services performed

B. 2.0 Reimbursable Expenses

B. 2.1 Reimbursable Expenses.

The Owner will pay the Design Firm for the Reimbursable Expenses listed below. Reimbursable Expenses are in addition to the Fixed Fee for Basic Services and are for certain actual expenses incurred by the Design Firm in connection with the Project as enumerated below.

B. 2.1.1 Travel Costs.

The reasonable expense of travel costs incurred by the Design Firm when requested by Owner to travel to a location for any project related activity or as necessary to perform permit processing, research of any other necessary activities at the governing agency's place of business. The cost per mile of travel by automobile is 58 cents.

B.2.1.3 Delivery Costs.

Courier services and overnight delivery costs.

B. 2.1.4 Reproduction Costs.

Reproduction and postage costs of required drawings, specifications, Bidding and Contract documents, excluding the cost of reproductions for the Design Firm or Subcontractor's own use.

B. 2.1.5 Additional Reimbursable Expenses.

The Design Firm and Owner may agree in an addendum or amendment to this Agreement to include certain other expenses not enumerated above as Reimbursable Expenses.

B .3.0 Additional Services

B. 3.1 Payment for Additional Services.

The Owner will pay the Design Firm only for Additional Services agreed to in an addendum or amendment to this Agreement executed by the Owner and the Design Firm pursuant to A.2. Payment for all such Additional Services shall be in an amount and upon the terms set out in such amendment or addendum and agreed upon by the parties. Each such amendment or addendum shall provide for a fixed price or, where payment for such Additional Services is to be on an hourly basis or other unit pricing method, for a maximum amount; each such amendment or addendum shall also provide for a method of payment, including, at a minimum, whether payment will be made in partial payments or in lump sum and whether it will be based upon percentage of completion or services billed for.

B. 4.0 Invoicing and Payments

B. 4.1 Invoices.

All payments shall require a written invoice from the Design Firm.

B. 4.2 Time of Payment.

Upon the Design Firm's proper submission of invoices for work performed or reimbursable expenses, the Owner shall make payment within fifteen calendar days of the Owner's receipt of the invoice. Invoices may be submitted via regular mail or e-mail. Any payment not made within 15 calendar days of the Owner's receipt of the invoice shall be subject to a 5% late fee, with an additional 5% added each month the invoice remains outstanding.

Article C: Responsibilities

C. 1.0 Design Firm's Responsibilities

C. 1.1 Basic Services.

The Design Firms shall provide the Basic Service set out in Article A.1.0.

C. 1.2 Additional Services.

When required under this Agreement or agreed to as set out in A.2.0, the Design Firm shall provide Additional Services on the Project.

C. 1.3 General Responsibilities.

The Design Firm shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other services, furnished by the Design Firm under this Agreement. Furthermore, this Agreement does not restrict or limit any rights or remedies otherwise afforded the Design Firm by law.

C. 1.4 Compliance with Laws, Codes, Ordinances and Regulations.

The Design Firm shall perform services that conform to all applicable Federal, State and local laws, codes, ordinances and regulations except as modified by any waivers which may be obtained with the approval of the Owner. The Design Firm shall prepare all construction documents required for approval by all governmental agencies having jurisdiction over the project. The Design Firm shall make all changes in the Construction Documents necessary to obtain governmental approval without additional compensation or reimbursement, except in the following situations: If subsequent to the date the Owner executes this Agreement, revisions are made to applicable codes or non-federal regulations, the Design Firm shall be entitled to additional compensation and reimbursements for any additional cost resulting from such changes.

C. 1.5 Seal.

Licensed Design Professionals shall affix their seals and signatures to drawings and specifications produced or managed under this Agreement when required by law.

C. 1.6 Attendance at Conferences.

A representative of the Design Firm shall attend project conferences and meetings involving matters related to basic services covered under this contract.

C. 2.0 Owner's Responsibilities

C. 2.1 Information.

The Owner shall provide information regarding requirements for the project, including a program that shall set forth the Owner's objectives and schedule. The Design Firm, however, shall be responsible to ascertain and know federal requirements and limitations placed on the Project.

C. 2.2 Notice of Defects.

If the Owner observes or otherwise becomes aware of any fault or defect in the construction of the project or nonconformance with the Construction Documents, the Owner shall give prompt written notice of those faults, defects or nonconformance to the Design Firm.

C. 2.3 Duties to Furnish.

The Owner shall provide the Design Firm the items listed below.

C. 2.3.1 Survey and Property Restrictions.

The Owner shall furnish topographic, property line and utility information as and where required. The Owner may at its election require the Design Firm to furnish any of these items as an Additional Service.

C. 2.3.2 Existing Conditions.

The Owner shall provide the Design Firm any available "as built" drawings of buildings or properties, architect surveys, test reports, and any other written information that it may have in its possession and that it might reasonably assume affects the work.

C. 2.3.3 Waivers.

The Owner shall provide the Design Firm information it may have obtained on any waivers of local codes, ordinances, or regulations or standards affecting the design of the Project.

C. 2.3.4 Tests.

When expressly agreed to in writing by both the Owner and the Design Firm, the Owner shall furnish the Design Firm all necessary structural, mechanical, chemical or other laboratory tests, inspections and

reports required for the Project.

C. 2.3.6 Contract Terms.

The Owner or its legal counsel may provide the Design Firm text to be incorporated into Construction Documents.

C. 2.4 Design Firm Site Signage

The Owner shall allow the Design Firm to keep for the duration of the project and until the Certificate of Occupancy is acquired signage on the premises of the project as allowed by local ordinances with the Design Firm's contact information.

Article D: Contract Administration

D. 1.0 Prohibition of Assignment.

The Design Firm shall not assign, subcontract, or transfer any services, obligations, or interest in this Agreement without the prior written consent of the Owner. Such consent shall not unreasonably be withheld when such assignment is for financing the Design Firm's performance.

D. 1.1 Ownership of Documents.

Drawings, specifications and other documents prepared by the Design Firm are the instruments of the Design Firm's service and are for the Owner's use solely with respect to this Project. The Design Firm shall retain all common law, statutory and other reserved right, including the copyright. Upon the completion of the Project or termination of this Agreement, the Owner's right to use the instruments of service shall cease. When transmitting copyright-protected information for use on the Project, the transmitting party represents that it is either the copyright owner of the information, or has permission from the copyright owner to transmit the information for its use on the Project.

D. 1.2 Suspension.

The Owner may give written notice to the Design Firm to suspend work on the project or any part thereof. The Owner shall be responsible for compensating the Design Firm for any work performed from the date of the previous paid invoice until the Design Firm receives the date the notice of Suspension.

D. 1.3 Disputes.

In the event of a dispute arising under this Agreement, the Design Firm shall notify the Owner promptly in writing and submit its claim in a timely manner. The Owner shall respond to the claim in writing in a timely manner. The Design Firm shall proceed with its work hereunder in compliance with the instructions of the Owner, but such compliance shall not be a waiver of the Design Firm's rights to make such a claim. The governing law for this agreement shall be that of the State of California. Any dispute not resolved by this procedure shall be resolved in the following manner and sequence:

1. Non-binding mediation to take place in the City of San Diego, County of San Diego, State of California.
2. Legal proceedings with both parties hereby irrevocably agreeing to the jurisdiction and forum of the State of California, San Diego County with respect to any cause-of-action, lawsuit, claim, or dispute initiated or arising hereunder.

D. 1.4 Termination.

The Owner may terminate this Agreement for failure of the Design Firm to fulfill contract obligations. The Owner shall terminate by delivering to the Design Firm a Notice of Termination specifying the reason therefore and the effective date of termination. Upon receipt of such notice, the Design Firm shall immediately discontinue all services affected and deliver to the Owner all information, reports, papers, and other materials accumulated or generated in performing this contract whether completed or in process. The Owner shall be liable for payment for services rendered before the effective date of termination.

D. 1.5 Indemnity

The Owner shall indemnify and hold the Design Firm, its officers, employees and consultants harmless

from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Owner, the Contractor or the employees, consultants or subcontractors of either of them.

D. 1.6 Consequential Damages

The Design Firm and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

D. 1.7 Deviations

If the Owner authorizes deviations, recorded or unrecorded, from the Instruments of Service prepared by the Design Firm or its consultants, the Owner shall indemnify and hold harmless the Design Firm, the Design Firm's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting in whole or in part from such deviations.

D. 1.8 Limitation of Liability

Neither the Design Firm, Design Firm's consultants, nor their agents or employees shall be jointly, severally or individually liable to the Owner in excess of the compensation to be paid pursuant to this Agreement by any reason of any act or omission, including breach of contract or negligence not amounting to a willful or intentional wrong.

Article E: Additional Requirements

E. 1.0 Severability

If a provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

1. the validity or enforceability in that jurisdiction of any other provision of this Agreement; or
2. the validity or enforceability in other jurisdictions of that or any other provision of this Agreement

E. 1.1 Integration

This Agreement, along with any exhibits, appendices, addenda, schedules, and amendments hereto, encompasses the entire agreement of the parties, and supersedes all previous understandings and agreements between the parties, whether oral or written. The parties hereby waive all rights and remedies, at law or in equity, arising or which may arise as the result of a party's reliance on such representation, assertion, guarantee, warranty, collateral contract or other assurance, provided that nothing herein contained shall be construed as a restriction or limitation of said party's right to remedies associated with the gross negligence, willful misconduct or fraud of any person or party taking place prior to, or contemporaneously with, the execution of this Agreement.

E. 1.2 Governing Law

This Agreement, and all claims or causes of action (whether at Law, in contract or in tort) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance hereof, shall be governed by and construed in accordance with the Laws of the State of California.

E. 1.3 Choice of Forum

In the event of any dispute concerning this Agreement, suit may be brought only in a court of competent jurisdiction in the State of California, County of San Diego.

E. 2.0 Retainer Payment

An retainer payment of **\$6,000** shall be made at the execution of this agreement. No work shall commence until the Design Firm receives this payment.

This Agreement is entered into as of the day and year first written above

Owner

(signature)

(printed name)

Design Firm

 Digitally signed by Abhay Schweitzer
DN: cn=Abhay Schweitzer,
o=TECHNE, ou,
email=abhay@techne-us.com,
c=US
Date: 2016.10.05 08:23:42
-08'00'

(signature)

Abhay Schweitzer Assoc. AIA - Principal