



## CONSULTING AGREEMENT

This Consulting Agreement (this "Agreement") is made and entered into effective as of June 12, 2024 (the "Effective Date"), by and between **RSC Insurance Brokerage, Inc., dba Risk Strategies Company** ("RISK STRATEGIES") having an office at 160 Federal Street, Boston, MA 02110, and **City of Madeira Beach** (the "CLIENT") having an office at 300 Municipal Drive, Madeira Beach, Florida 33708, United States. RISK STRATEGIES and CLIENT each a "Party", and together the "Parties."

**WHEREAS**, CLIENT wishes to procure consulting services as more fully described herein (the "Services") from RISK STRATEGIES, and RISK STRATEGIES desires to provide the Services to CLIENT.

**NOW, THEREFORE**, in consideration of the foregoing recitals, the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Services.** During the Term, as defined below, RISK STRATEGIES will perform the Services for CLIENT as noted in the applicable Scope of Work (SOW).
2. **Compensation.** In consideration of the Services to be provided by RISK STRATEGIES in Exhibit "A" attached hereto, the CLIENT agrees to pay RISK STRATEGIES the sum of \$37,640.00, to include the Comprehensive job description review, revision, and development, Option 1.
3. **Nature of Relationship.** In the performance of all services and obligations hereunder, it is mutually understood and agreed by the Parties that RISK STRATEGIES is at all times acting and performing as an independent contractor. It is further specifically acknowledged and agreed that nothing in this Agreement shall be considered to create more than the mutual duties, responsibilities and benefits specifically set forth herein. This Agreement is not and shall not be considered an employer-employee relationship, joint venture, or partnership of any kind and neither party shall represent to any third persons that any such relationship exists.
4. **Term and Termination.** The term of this agreement will continue until completion of the Services (the "Term"). Either Party may terminate this Agreement, effective immediately upon written notice to the other party to this Agreement, if the other party materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the other party does not cure such breach within 45 business days after receipt of written notice of such breach.
5. **Information Provided by CLIENT.** CLIENT shall be required to provide RISK STRATEGIES with all information reasonably required to complete the Services in a timely manner. CLIENT shall cooperate with RISK STRATEGIES' requests for information and resources in order to complete the Services. RISK STRATEGIES will not be responsible for independently verifying the accuracy, completeness, or authenticity of any instructions or information provided to RISK STRATEGIES by the CLIENT or its designated representatives.
6. **Confidentiality.** In the course of providing the Services the Parties may disclose confidential information to each other. "**Confidential Information**" means all non-public, confidential or proprietary information disclosed before, on or after the Effective Date, by one Party (the "Disclosing Party") to the other Party (the "Recipient"), whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," including, but not limited to, all information concerning the Disclosing Party's past, present and future business affairs including, without limitation, finances, insurance policies, customer information, products, services, organizational structure and internal practices, employees, financial results, records and budgets, and business, marketing, development, sales and other commercial strategies, and all notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations and other materials prepared by or for the Recipient that contain, are based on, or otherwise reflect or are derived from, in whole or in part, any of the foregoing. Except as required by applicable federal, state or local law or regulation, the



term "Confidential Information" as used in this Agreement shall not include information that:

- (a) at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any violation of this Agreement by the Recipient;
- (b) at the time of disclosure is, or thereafter becomes, available to the Recipient on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information to the Recipient by a legal, fiduciary or contractual obligation to the Disclosing Party;
- (c) was known by or in the possession of the Recipient, as established by documentary evidence, prior to being disclosed by or on behalf of the Disclosing Party pursuant to this Agreement; or
- (d) was or is independently developed by the Recipient, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information.

The Recipient shall protect and safeguard the confidentiality of all such Confidential Information with at least the same degree of care as the Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care and shall only use the Confidential Information in connection with the Services.

Notwithstanding anything contained herein to the contrary, RISK STRATEGIES and the CLIENT will each comply with any prohibitions, restrictions, limitations, conditions, or other requirements pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulations concerning privacy of individually identifiable information as set forth in 45 CFR Parts 160-164, as amended from time to time. Where required, the CLIENT, as a representative of the health plans and RISK STRATEGIES will enter into a separate Business Associate Agreement.

Each Party acknowledges and agrees that money damages might not be a sufficient remedy for any breach or threatened breach of this Paragraph 6 by such Party. Therefore, in addition to all other remedies available at law (which neither Party waives by the exercise of any rights hereunder), the non-breaching Party shall be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and the Parties hereby waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.

Each Party hereby retains its entire right, title, and interest, including all intellectual property rights, in and to all of its Confidential Information. Any disclosure of Confidential Information hereunder shall not be construed as an assignment, grant, option, license, or other transfer of any such right, title or interest whatsoever to the Recipient.

7. **CLIENT Obligations.** CLIENT shall be responsible for reviewing all insurance policies for accuracy and adequacy of coverage.
8. **Acts of other Brokers & Consultants.** RISK STRATEGIES will not be responsible for deficiencies in any of CLIENT's insurance policies, coverage and programs not placed by RISK STRATEGIES. RISK STRATEGIES shall not have any liability for the acts, errors and omissions of CLIENT's previous/other brokers or advisors.
9. **ERISA Fiduciary.** To the extent that one or more of the CLIENT's employee benefit plans are subject to the Employee Retirement Income Security Act, as amended ("ERISA") notwithstanding any other provision of this Agreement to the contrary, the parties agree and acknowledge as follows:
  - a. RISK STRATEGIES' services under this Agreement do not impose on RISK STRATEGIES or any of its affiliates a fiduciary status under ERISA; and
  - b. This Agreement does not provide RISK STRATEGIES, and the CLIENT will not cause or permit RISK STRATEGIES to assume, without prior written consent of RISK STRATEGIES, any: (i) discretionary



authority or discretionary control respecting management of any "employee benefit plan" within the meaning of Section 3(3) of ERISA (an "ERISA Plan"); (ii) authority or control respecting management or disposition of the assets of any ERISA Plan; or (iii) discretionary authority or discretionary responsibility in the administration of any ERISA Plan.

**10. Legal Practice.** RISK STRATEGIES will not be obligated to perform, and the CLIENT will not request performance of, any services which may constitute the practice of law. The CLIENT will be solely responsible for obtaining any legal advice, review or opinion as may be necessary to ensure that its own conduct and operations, including the engagement of RISK STRATEGIES under the scope and terms as provided herein, conform in all respects with applicable local, state and federal laws, rules, and regulations (including ERISA, the Internal Revenue Code, state and federal securities laws and implementing regulations) and, to the extent that the CLIENT has foreign operations, any applicable foreign laws and regulations.

**11. Limitation of Liability.**

- a. No Consequential or Indirect Damages. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHERPARTY OR ANY THIRD PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, OR LOST PROFITS OR REVENUES, OR ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT IT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.
- b. Maximum Liability. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF, OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED \$50,000. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL NOT APPLY TO: EITHER PARTY'S GROSSLY NEGLIGENT ACTS OR OMISSIONS, WILLFUL MISCONDUCT, OR CLIENT'S FAILURE TO PAY RISK STRATEGIES AMOUNTS DUE HEREUNDER. Each party acknowledges and agrees that the parties entered into the Agreement in reliance upon the limitations of liability set forth in this Section, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

**12. Notices.** Any notice given under this Agreement shall be in writing and either delivered personally, sent by overnight courier, or mailed by certified mail, return receipt requested, to the addressee. Such notice shall be deemed given when so delivered personally, or if sent by overnight courier, one (1) business day after the date so sent, or if mailed by certified mail, three (3) business days after the date of mailing. Notices shall be sent to the address of the addressee stated below or to such other address as any addressee shall request by written notice.

If to **CLIENT:**

If to **RISK STRATEGIES:**

ATTN:	ATTN: Kurt N. Gehring, Managing Director
ADDRESS: 300 Municipal Drive, Madeira Beach, Florida 33708, United States	ADDRESS: 160 Federal Street, Boston, MA, 02110
With a Copy to:	With a Copy to: <a href="mailto:legal@risk-strategies.com">legal@risk-strategies.com</a>



13. **Warranty.** The Services are provided on an “as is” basis. RISK STRATEGIES EXPRESSLY DISCLAIMS, WAIVES, RELEASES AND RENOUNCES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE.

14. **Client Conflicts.** RISK STRATEGIES has a large and broad base of clients to which it provides an array of risk, insurance brokerage, and consulting services. CLIENT may find itself in a position adverse to that taken by another RISK STRATEGIES client. In view of this, both Parties acknowledge that this Agreement does not disqualify RISK STRATEGIES, at any time, on the basis of the representation of another client.

15. **Miscellaneous.**

**Jurisdiction and Venue.** This Agreement and the rights of the Parties hereto shall be governed by, construed, and enforced in accordance with the substantive laws of the Commonwealth of Massachusetts without reference to the laws of any other state or jurisdiction. The Parties agree that any legal proceeding arising out of or in connection with this Agreement or the rights of the Parties hereto must be commenced and prosecuted to conclusion in the Commonwealth of Massachusetts.

**Entire Agreement.** This Agreement contains the entire agreement between CLIENT and RISK STRATEGIES concerning the provision of the Services which are the subject hereof. This Agreement may only be amended by a written amendment signed by both CLIENT and RISK STRATEGIES.

**Attorneys’ Fees.** If a Party institutes a legal action in any court to enforce the terms of this Agreement, the prevailing Party in such litigation shall, in addition to such other relief as the court may grant, be entitled to a reasonable award of attorneys’ fees and costs.

**Survival.** The obligations under Section 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, and 15 shall survive the termination of this Agreement.

**Severability.** Should any one or more of the provisions of this Agreement be determined to be illegal or unenforceable, all other provisions of the Agreement shall be given effect separately from the provisions of this Agreement so determined and the other provisions shall not be affected by the illegality or unenforceability.

**Headings.** Headings or captions of paragraphs or sections of this Agreement are for convenience of reference only and shall not be considered in the interpretation of this Agreement.

**Assignment.** This Agreement will be binding upon, and inure to the benefit of, both Parties and their respective successors and assigns, including any entity with which, or into which, RISK STRATEGIES may be merged, or which may succeed to its assets or business. CLIENT will not assign this Agreement without the prior written consent of RISK STRATEGIES.

**Signatures.** This Agreement may be executed via facsimile or electronically, and the facsimile or electronic signature of any Party of a counterpart hereof shall be considered valid, binding and effective for all purposes.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed on the Effective date.

RISK STRATEGIES COMPANY

CLIENT: CITY OF MADEIRA BEACH

By: \_\_\_\_\_  
Kurt N. Gehring

By \_\_\_\_\_  
Print Name:

Print Title:

Exhibit "A" – Scope of Work