

## CONSULTING AND DESIGN SERVICES AGREEMENT

**THIS AGREEMENT** is hereby made and entered into this 29<sup>th</sup> day of March, 2024, by and between the CITY OF MADEIRA BEACH, FLORIDA, (hereinafter referred to as "CITY"), and

Kimley-Horn and Associates, Inc. \_\_\_\_\_, a Florida Corporation (hereinafter referred to as "CONSULTANT").

**WHEREAS**, CITY desires to engage a firm to provide professional consulting, or design services for the project hereafter described;

**WHEREAS**, CITY desires to engage CONSULTANT to provide consulting and design services upon the Scope of Services to be issued subsequent to the execution of this agreement;

**WHEREAS**, CONSULTANT is qualified and able to provide the services described herein;

**WHEREAS**, this agreement has been properly approved by the appropriate authority for CITY and CONSULTANT.

**NOW, THEREFORE**, for an in consideration of the premises, the mutual covenants hereinafter recited, and for other good, valuable, and sufficient consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

### ARTICLE 1 - PROJECT

#### **1.1 PROJECT**

CONSULTANT shall provide CITY consulting, services in accordance with this Agreement and as more particularly described in the Scope of Services, as detailed in the attached Exhibit A and set forth below (hereinafter "SERVICES").

#### **1.2 PROJECT TERM AND PARAMETERS**

**1.2.1** - CONSULTANT shall serve as the CITY's Master Plan Planning Consultant and this Agreement shall commence on the Effective Date and remain in force until all work issued during the effective period of this Agreement is completed, unless terminated by pursuant to Article 7, but not to exceed five years.

**1.2.2** - The consulting firm shall assist the City towards creating and implementing a new master plan.

The CONSULTANT's services may include, but not be limited to, planning, design, economic studies, and reviews.

## ARTICLE II - SERVICES

### **2.1 SCOPE OF SERVICES**

**2.1.1** - CONSULTANT shall develop a new city Master Plan which will include data collection and analysis, community engagement, visioning and goal setting, plan development, implementation strategy, and plan adoption as detailed in the attached Scope of Services.

**2.1.2** - The CONSULTANT will work to create and implement a new Master Plan with assistance from City staff.

**2.1.3** - The City reserves the right to issue separate contracts for specific services at the city's sole discretion.

**2.1.4** - The following accreditations of each firm's employees or sub-consultants are highly desirable but not required: AICP, CFM, AIA, ASLA, and LEED certified professionals.

**2.1.5** - The SERVICES shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work, using that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession in the same locality at the time the services are provided, herein after "Standard of Care".

**2.1.6** - This Agreement and Exhibits referenced herein constitute the entire Agreement between the Parties with respect to subject matter and mutually agree that no verbal agreements, representations, warranties or other understandings affecting the same exist. No amendment hereof shall be effective until and unless reduced to writing and executed by the Parties. The Parties shall execute any additional documents as may be necessary to implement and carry out the intent of this Agreement.

### **2.2 PROJECT STUDY AND DESIGN SERVICES**

As specifically authorized by a Scope of Services approved by CITY in writing, CONSULTANT shall perform the following services:

**2.2.1.** - CONSULTANT shall conduct charrettes, public meetings, surveys, and prepare planning reports and renderings, pertaining to the PROJECT. Upon CONSULTANT's receipt of payment for services rendered, CONSULTANT will provide one (1) copy of the PROJECT and reproducible drawings and an electronic version of all contract documents as set forth in the Scope of Services shall be submitted to CITY by CONSULTANT.

**2.2.2** - CONSULTANT shall review published laws, codes, and regulations, in effect at the time SERVICES are rendered and applicable to the PROJECT, and shall incorporate all legal requirements, and requirements of government agencies having jurisdiction over the PROJECT, into the design thereof.

## ARTICLE 3 – CITY RESPONSIBILITIES

### **3.1 COVENANTS BY CITY**

**3.1.1** - CITY shall:

**3.1.1.1** - Pay such fees as are due and payable to CONSULTANT, in advance in writing, and properly performed. The CONSULTANT shall begin work on the Scope of Services after receipt of a notice to proceed. The times for performance shall be extended as necessary for periods of suspension or delay resulting from circumstances the CONSULTANT does not control.

**3.1.1.2** - Appoint a representative under this Agreement, with authority to authorize Work under this Agreement, transmit instructions, receive information, and transmit interpretations and definitions of the CITY'S policy and decisions pertinent to the Work covered by the applicable Scope of Services.

**3.1.1.3** - Make available, upon request of CONSULTANT, all existing records, reports, drawings, maps, plans, photographs, surveys, or other data in CITY'S possession pertaining to the Work on the PROJECT under any Scope of Services authorized hereunder, all of which the CONSULTANT may rely upon.

**3.1.1.4** - Make facilities and properties, under CITY'S control, available and accessible for inspection and access by CONSULTANT, for the performance of the Work hereunder.

#### **ARTICLE 4- PERSONNEL**

**4.1** - CONSULTANT'S professional personnel who shall be assigned to the PROJECT shall be as set forth in the Scope of Services for each phase of the PROJECT, as designated therein.

#### **ARTICLE 5 -SCHEDULE**

**5.1** - CONSULTANT shall proceed with the SERVICES upon receipt of CITY'S signed authorization to proceed. Following the initial planning meeting with CITY and the other professionals on the PROJECT, CONSULTANT shall prepare a master PROJECT schedule, including the data collection and analysis, community engagement, visioning and goal setting, plan development, implementation strategy, and plan adoption as outlined in the Scope of Services. CONSULTANT shall submit for CITY'S approval a schedule for the performance of the SERVICES, which shall include allowances for periods of time required for CITY'S review and approval of submissions by authorities having jurisdiction over the PROJECT. Time limits established by the schedule approved by CITY and mutually agreed to, shall not be exceeded by CONSULTANT. The preliminary schedule shall be as provided in the Scope of Work Order for each phase of the PROJECT. Notwithstanding any other provision of this Agreement, the CONSULTANT shall not have liability for or be deemed in breach because of delays caused by any factor outside of its reasonable control, including but not limited to natural disasters, adverse weather, or acts of the CITY, third parties, or governmental agencies.

#### **ARTICLE 6 – FEES AND COSTS**

##### **6.1 PAYMENT FOR SERVICES**

**6.1.1** - CITY shall pay CONSULTANT for all services authorized and properly performed per the Standard of Care and subject to the budget set out in the attached Scope of Services, by one of the following methods, as agreed in writing, in advance, by the parties:

**6.1.1.1** - The mutually agreed upon lump sum of \$150,000; or

**6.1.2** - Should the Scope of Services require additional services, those services shall be mutually agreed to in writing and CITY shall pay CONSULTANT its the then current hourly rates or a mutually agreed to lump sum fee as set forth in an amendment to this Agreement. - Reimbursable expenses shall be invoiced at the actual expenditures incurred by CONSULTANT as follows:

**6.1.2.1** - Expense of transportation and living when performing travel authorized in writing by City, for long distance calls and telegrams, and for any fees paid for securing approval of authorities having jurisdiction over the Scope of Services. CITY shall pay such fees, directly, when a price advantage is available.

Travel expenses shall be in accordance with CITY'S travel and per diem allowance schedule. Travel to CITY offices and work sites and telephone and other consultation with CITY shall not be reimbursable; and

**6.1.2.2** - Expenses for reproduction, postage and handling of drawings and specifications, except file copies, such copies as required to facilitate review and approval and copies provided to contractors in accordance with terms of a contract. Copies provided to prospective bidders shall be sold, directly, to the prospective bidders by CONSULTANT.

**6.1.3** - All fees shall be invoiced monthly and payment of each invoice will be due within 30 days of receipt. The monthly amount due shall be determined as the costs are incurred for SERVICES performed in proportion of the work completed for services to be performed for the lump sum method of compensation is , in accordance with the Scope of Services attached as Exhibit A. If the CITY fails to make any payment due the CONSULTANT under this or any other agreement within 30 days after the CONSULTANT's transmittal of its invoice, the CONSULTANT may, after giving notice to the CITY, suspend services and withhold deliverables until all amounts due are paid in full.

**6.1.4** - If during and after the completion of the PROJECT described in this Agreement, in accordance with the directions of CITY, it becomes necessary to review or revise the PROJECT due to changes in published federal, state, or city law, rules, regulations or other requirements adopted after preparation thereof, payment for such review or revision shall be made to CONSULTANT according to such method or methods of calculating the fee as may be mutually agreed upon in advance, and in writing. Other changes or revisions shall be made only upon written authorization of CITY directing such changes, review or revisions by CONSULTANT. SERVICES for such changes or revisions shall be paid for at a mutually agreed upon lump sum or at the rates of payment described above, as agreed in advance, in writing, by the parties.

**6.1.5** - CONSULTANT warrants that it has not employed or retained any company or person, other than bona fide employees working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

## **ARTICLE 7 - MISCELLANEOUS**

### **7.1 TERMINATION**

**7.1.1** – Upon thirty days' written notice, either party may terminate this Agreement, without cause. CONSULTANT shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by CONSULTANT as a result of such termination.

**7.1.2** - CITY may suspend, cancel or abandon any part or phase of the PROJECT described in the Scope of Services, or the services of the CONSULTANT called for under the Scope of Services, without cause, upon providing CONSULTANT five (5) days prior written notice, and CONSULTANT shall be compensated for the professional services provided and reimbursable expenses incurred up to the date of suspension, cancellation or abandonment.

**7.1.3** - It is expressly understood by CONSULTANT that the PROJECT is contingent upon the availability of sufficient funding for the same, and the PROJECT may be reduced or enlarged in scope and the planning services and payments provided hereunder may be adjusted accordingly, as mutually agreed to in writing.

## **7.2 OWNERSHIP OF DOCUMENTS, MATERIALS**

**7.2.1** - Upon CONSULTANT'S receipt of payment for services rendered, reproducible copies of all documents, prepared for the PROJECT, shall be the property of CITY and shall be delivered to CITY upon completion of each said document. CITY may utilize any documents prepared by CONSULTANT hereunder in any manner it chooses, in its sole discretion, without being subject to any copyright protection.

**7.2.2** - All documents, prepared by CONSULTANT pursuant to this Agreement, are not intended or represented to be suitable for reuse by others on extensions of the PROJECT or on any other project. Any reuse without written verification or adaptation by CONSULTANT for the specific purposes intended shall be at CITY'S sole risk. Any such verification or adaptation by CONSULTANT shall entitle CONSULTANT to further compensation at rates to be agreed upon by the parties.

**7.2.3** - Any equipment, materials or supplies for which CITY pays a specific charge under this Agreement shall become the property of CITY upon completion of the part or phase of the PROJECT for which the item was specifically purchased, but in no event later than termination of this Agreement.

## **7.3 PUBLIC RECORDS**

**7.3.1** - CONSULTANT acknowledges that it is acting on behalf of a public agency; this Agreement is subject to the provisions of §119.0701, Florida Statutes, and that CONSULTANT must comply with the public records laws of the State of Florida. CONSULTANT acknowledges that some or all the documents generated or kept by CONSULTANT, or any sub-consultant may be deemed to be public records under Florida law, and CONSULTANT fully accepts any responsibility required by law in producing or making available said documents.

**7.3.2** - CONSULTANT shall comply with the following with regard to public records and agrees to the following:

**7.3.2.1** - The CONSULTANT shall keep and maintain and not delete any and all public records required by the public agency and CONSULTANT necessary to perform the service.

**7.3.2.2** - Upon request from the public agency's custodian of public records, the CONSULTANT shall provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed the costs provided in this chapter or as otherwise provided by law.

**7.3.2.3** - The CONSULTANT shall ensure that public records that are exempt or confidential and, therefore exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract.

**7.3.2.4** - The CONSULTANT shall, upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the CONSULTANT or keep and maintain public records required by the public agency to perform the service. If the CONSULTANT transfers all public records to the public agency upon completion of the contract, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and, therefore, exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the contract, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

**7.3.2.5** - A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the custodian of public records for the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the CONSULTANT of the request. The CONSULTANT must provide the records to the public agency or allow the records to be inspected, copied or photographed within a reasonable time and in compliance with the requirements of §119.07, Florida Statutes.

**7.3.2.6** - If CONSULTANT does not comply with a public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.

**7.3.2.7** - A CONSULTANT who fails to provide public records to the public agency within a reasonable time may be subject to penalties under §119.10, Florida Statutes.

**7.3.2.8** - If a civil action is filed against a CONSULTANT to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the CONSULTANT the reasonable costs of enforcement, including reasonable attorney fees, if: The court determines that the CONSULTANT unlawfully refused to comply with the public records request within a reasonable time, and; at least eight (8) business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the CONSULTANT has not complied with the request, to the public agency and to the CONSULTANT.

**7.3.2.9** - The notice requirement is satisfied if written notice is sent to the public agency's custodian of public records and to the CONSULTANT at the CONSULTANT's address listed in this contract with the public agency or to the CONSULTANT's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

**7.3.2.10** - A CONSULTANT who fully, completely, and timely complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

**7.3.2.11** - If the CONSULTANT Has Questions Regarding the Application Of Chapter 119, Florida Statutes, To The CONSULTANT's Duty To Provide Public Records Relating To This Contract, Contact The Custodian Of Public Records At:

City of Madeira Beach

City Clerk Clara VanBlargan

Madeira Beach, FL 33708 727-391-9951, Ext. 231 cvanblargan@madeirabeachfl.gov

#### **7.4 WARRANTY, INSURANCE AND LIABILITY**

**7.4.1** - CONSULTANT warrants that the SERVICES shall be carefully, skillfully, and timely performed; in accordance with the standard for such professional services at the time those services are rendered, per the Standard of Care.

**7.4.2** - Throughout the term of this Agreement and until the completion of all construction of the PROJECT, CONSULTANT shall carry liability insurance for injury or loss arising from comprehensive general and automobile exposures at a minimum of \$1,000,000.00 per individual, per occurrence, and professional liability insurance in an amount not less than \$1,000,000.00. CONSULTANT shall provide to CITY certificates of insurance evidencing the existence of each required insurance policy, within (30) days of the date of this Agreement. The certificates of insurances shall provide that CITY be notified at least (30) days prior to the cancellation or reduction in policy limits of the policy. Additional certificates of the insurance required hereby shall be provided by CONSULTANT at any time requested by CITY.

#### **7.5 INDEMNIFICATION**

**7.5.1** - CONSULTANT shall indemnify, and hold harmless, CITY, its Board of Commissioners, charter officers, attorneys, and employees from, and against all liability and expense, including reasonable attorney's fees incurred thereby through all appellate proceedings, arising from any claims, damages, suits for personal injuries, property damage, equitable relief, fines, penalties or other liability to the extent caused by CONSULTANT's negligent acts, errors or omissions in the performance of the professional SERVICES hereunder. The claims covered by this section shall include claims made by CONSULTANT'S employees, and CONSULTANT hereby waives its entitlement, if any, to immunity under Chapter 440, Florida Statutes

**7.5.2** - The obligations of the CONSULTANT under this section shall not be limited in any way by any immunity from or limitation of liability that the CITY may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes. The obligations under this section shall survive termination of this Agreement and shall not be limited by the amount of any insurance required to be obtained or maintained by CONSULTANT under this Agreement.

**7.5.3** - CITY shall have the right, at its option, to participate in the defense of any third-party claim, without relieving CONSULTANT of any of its obligations hereunder. CONSULTANT shall obtain the prior written consent of CITY prior to entering any settlement of such claim.

## **7.6 OTHER REQUIREMENTS**

**7.6.1** - Nothing contained herein guarantees CONSULTANT any amount of work or compensation. This Agreement shall not be considered an exclusive agreement, and CITY shall not be obligated to exclusively use the services of CONSULTANT for any project it undertakes.

**7.6.2** - This Agreement supersedes all prior negotiations and oral or written agreements heretofore made relating to the subject matter and constitutes the entire agreement of the parties relating to the subject matter hereof. This Agreement may not be altered or amended except in writing and signed by the parties hereto. No waiver of any of the terms or conditions of this Agreement shall be effective unless in writing and executed by the party to be charged therewith. The failure to enforce any provision or part of this Agreement shall not constitute a waiver of the right to enforce any part or provision hereof, including the same part or provision in the future. If any portion or part of this agreement is declared invalid by a court of competent jurisdiction, the remainder hereof shall remain in full force and effect.

**7.6.3** - This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

**7.6.4** - This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto a) irrevocably submits itself to the exclusive jurisdiction and venue of the Circuit Court of the State of Florida, Pinellas County, and the jurisdiction of the United States District Court for the Middle District of Florida, Tampa Division, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Agreement; b) waives and agrees not to assert against any party hereto, by way of motion, as a defense or otherwise, in any suit, action or other proceeding, (i) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason whatsoever; and (ii) to the extent permitted by applicable law, any claim that such suit, action or proceeding by any party hereto is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper.

**7.6.5** - This Agreement shall create no rights or claims whatsoever in any person other than a party hereto, except as provided herein. There shall be no third-party beneficiaries under this Agreement of any kind.

**7.6.6** - In the event either party employs an attorney to enforce any of the conditions of this Agreement, or to enforce any covenants hereunder, or to enforce any of the rights, remedies, privileges or options at law or in equity, or in any action between the parties, the prevailing party shall be entitled to reimbursement from the non-prevailing party of all costs and expenses incurred or paid by the prevailing party in so doing, including without limitation, all attorneys' and paralegal fees and costs whether the matter is settled privately, by arbitration, or by legal action at the trial court level and at any and all appellate court levels in all matters of collection and enforcement, construction and interpretation, before, during and after suit, trial, post-trial and all appellate proceedings, as well as appearances in and connected with any bankruptcy proceedings or creditors' reorganization or similar proceedings.

**7.6.7** - PURSUANT TO FLORIDA STATUTE 558.0035, EMPLOYEES OF CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE UNDER THIS AGREEMENT.



**7.6.8** - All final documents shall be submitted to the City Commission of CITY for review and approval. All modifications of this agreement shall not be effective unless approved by the City Commission of CITY, in writing.

**7.6.9** - Any notices provided hereunder shall be sent to the parties at the following addresses and shall be considered properly delivered when placed in the U.S. mail, postage prepaid, certified return receipt requested:

As to CONSULTANT:



Dawn Dodge, P.E.  
Associate  
Kimley-Horn and Associates, Inc.

As to CITY:

City Manager & City Clerk City of Madeira  
Beach, Florida 300 Municipal Dr.  
Madeira Beach, Florida 33706

**EXHIBIT A**

**SCOPE OF WORK ORDER**

**Describing a specific agreement between Kimley-Horn and Associates, Inc. (the Consultant), and the CITY OF MADEIRA BEACH, FLORIDA (the City) in accordance with the terms of the Consulting and Design Services Agreement for Continuing Professional Services dated \_\_\_\_\_, which is incorporated herein by reference.**

**Identification of Project:**

**Project Name:**

**Consultant Project Manager:**

**Project Number:**

**Specific scope of basic Services:**

**Schedule:**

**Deliverables:**

**Terms of compensation:**

**Other special terms of Individual Project Order:**