

CITY OF CLEARWATER AGREEMENT FOR FINANCIAL ADVISOR SERVICES

THIS AGREEMENT (hereinafter referred to as “Agreement”) is made and entered into this 7th day of March 2024, by and between **City of Clearwater** (hereinafter referred to as “City,”), and Public Resources Advisory Group, Inc. (hereafter referred to as "Advisor"), whose address is 150 Second Avenue North, Suite 400, St. Petersburg, Florida 33701.

RECITALS

WHEREAS, the City has need of professional services for a highly skilled and experienced financial advisor; and

WHEREAS, the parties desire to enter into a written agreement outlining the duties, responsibilities and compensation of Advisor, based on the Advisor’s response to Hillsborough County RFP 23417.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The relationship of the Advisor to the City will be that of a professional Advisor and the Advisor will provide the professional and technical services required under this Agreement in accordance with acceptable professional practices and ethical standards applicable to Advisor’s profession, and Advisor will endeavor to provide to the City prompt and efficient services to the best of its ability.
2. Advisor is hereby retained and employed as a City of Clearwater Advisor and will work with the City to provide services in accordance with the scope of work outlined in Hillsborough County’s RFP 23417.
3. The term of this Agreement shall commence on March ____, 2024 and continue in full force through September 30, 2027, and subject to renewal, extension per the Hillsborough County agreement, unless otherwise terminated by City as provided in paragraph four (4) of this Agreement. The term of this Agreement does not relieve the Advisor of any future responsibility as described in paragraph six (6) of this Agreement.
4. This Agreement may be terminated by either party upon thirty (30) days prior written notice to the other party at the address designated in this Agreement for receiving such notice. If this Agreement is terminated, Advisor shall be authorized to receive payment for all work performed up to the date of termination.
5. With regard to compensation paid to Advisor, Advisor shall furnish to the City an itemized invoice detailing the basis for compensation, including as appropriate the debt amount, or hours, services, expenses and any other services utilized by the City. The invoice shall be itemized pursuant to and in accordance with the Proposal, attached hereto, and incorporated herein *in haec verba*. Advisor shall submit all invoices pursuant to the Local Government Prompt Payment Act, F.S. 218. Advisor acknowledges and agrees that the rates set forth in the attached shall remain fixed throughout the duration of this Agreement, and thereafter shall only be adjusted by mutual written agreement of both parties.

6. General Considerations.

- a. All reports, drawings, designs, specifications, notebooks, computations, details, and calculation documents prepared by Advisor and presented to the City pursuant to this Agreement are and remain the property of the City as instruments of service.
- b. All analyses, data, documents, models, modeling, reports and tests performed or utilized by Advisor shall be made available to the City upon request and shall be considered public records.
- c. Advisor is required to: (i) keep and maintain public records required by City; (ii) upon request from City, provide City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a reasonable or as otherwise provided by law; (iii) ensure that public records that are exempt or, confidential and exempt, from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if Advisor does not transfer the records to City; (iv) upon completion of this Agreement, transfer, at no cost, to City all public records in possession of Advisor or keep and maintain public records required by City.
- d. If Advisor transfers all public records to City upon completion of this Agreement, Advisor shall destroy any duplicate public records that are exempt or, confidential and exempt, from public records disclosure requirements, subject to the Advisor's record retention obligations. If Advisor keeps and maintains public records upon completion of this Agreement, Advisor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to City, upon request from City, in a format that is compatible with the information technology systems of City.
- e. Advisor shall keep all books, records, files, drawings, plans and other documentation, including all electronically stored items, which concern or relate to the services required hereunder (the "Records"), for a minimum of five (5) years from the date of expiration or suspension of this Agreement, or as otherwise required by any applicable law, whichever date is later. The City shall have the right to order, inspect, and copy all the Records as often as it deems necessary during any such period-of-time. The right to audit, inspect, and copy Records shall include all of the records of sub-Advisors (if any).
- f. Advisor shall, at all times, comply with the Florida Public Records Law, the Florida Open Meeting Law and all other applicable laws, rules and regulations of the State of Florida.

IF THE ADVISOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ADVISORS' DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTOMER RECORDS CUSTODIAN AT: (727) 562-7142, OWEN.KOHLER@MYCLEARWATER.COM ,WITH AN OFFICE LOCATED AT 645 PIERCE ST., CLEARWATER, FL 33756.

- a. Advisor shall, at all times, carry General Liability, and Worker's Compensation Insurance pursuant to the insurance requirements, naming City as both a certificate holder and an additional insured in each such policy.
- b. Upon Advisor's written request, the City will furnish, or cause to be furnished, such reports, studies, instruments, documents, and other information as Advisor and City mutually deem necessary, and Advisor may rely upon same in performing the services required under this Agreement.

- c. Advisor is obligated by this agreement to comply with Section 20.055(5), Florida Statutes.
 - d. Any entity or affiliate who has had its Certificate of Qualification suspended, revoked, denied or have further been determined by the City to be a non-responsive Advisor may not submit a bid.
7. The Advisor may be required to provide additional services to the City on challenges, public protests, administrative hearings or similar matters. The Advisor shall be available to represent the City, serve as an expert witness, and provide supporting documentation as necessary. Should any other professional services be called for by the City that are not otherwise set forth in this Agreement or any of its attachments or exhibits, charges for these services shall be agreed upon in advance by the parties hereto.
8. The Contract Documents, which comprise the entire Contract between City and Advisor and which are further incorporated herein by reference, consist of the following:
- a. Hillsborough County Solicitation RFP 23417
 - b. Advisor's Proposal in Response to Hillsborough County Solicitation RFP 23417
 - c. This Agreement
9. Advisor shall be solely and entirely responsible for its tortious acts and for the tortious acts of its agents, employees, or servants during the performance of this Agreement. Advisor shall indemnify and save harmless the City, its agents, employees and officers from and against all liabilities, claims, demands, or actions at law and equity including court costs and attorney's fees that may hereafter at any time be made or brought by anyone for the purposes of enforcing a claim on account of any injury or damage allegedly caused or occurring to any person or property in which was caused in whole or in part by any tortious, wrongful, or intentional acts or omissions of Advisor, its agents, or employees during performance under this Agreement. The foregoing is not intended, and shall not be construed, as a waiver by City of the benefits of Section 768.28, *Florida Statutes*.
10. Advisor is, and shall be, in the performance of all services and activities under this Agreement, an independent Advisor, and not an employee, agent, or servant of City; and no provisions of City's personnel policies shall apply to this Agreement. None of the benefits provided by City to its employees including, but not limited to, worker's compensation insurance and unemployment insurance, are available from City to Advisor, or its employees, agents or servants. Advisor assumes responsibility for payment of all federal, state and local taxes imposed or required of Advisor including but not limited to FICA, FUTA, unemployment insurance, Social Security and income tax laws for which Advisor as employer is responsible. Advisor shall be solely responsible for any worker's compensation insurance required by law and shall provide the City with proof of insurance upon demand. The parties agree that City shall not: (a) pay dues, licenses or membership fees for Advisor; (b) require attendance by Advisor, except as otherwise specified herein; (c) control the method, manner or means of performing under this Agreement, except as otherwise specified herein; or (d) restrict or prevent Advisor from working for any other party.
11. **Force Majeure.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder)], when and to the extent such failure or delay is caused by or results

from the following force majeure events ("**Force Majeure Events**"):

- (a) acts of God;
- (b) flood, fire, earthquake or explosion;
- (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, warlike operation, insurrection, rebellion, revolution, military or usurped power, sabotage or other civil unrest;
- (d) strikes, embargoes, blockades, labor stoppages, lockouts or slowdowns or other industrial disturbances or inability to obtain necessary materials or services
- (e) governmental delay regarding permits or approvals;
- (f) action by any governmental authority;
- (g) national or regional emergency;
- (h) shortage of adequate power or transportation facilities; or
- (j) other similar events beyond the reasonable control of the party impacted by the Force Majeure Event (the "**Impacted Party**") and provided further, however, that such performance shall be resumed and completed with due diligence and reasonable dispatch as soon as the contingency causing the delay or impossibility shall abate.

12. **Attorney's Fees; and Costs of Enforcement.** In the event suit is commenced to enforce this Agreement, costs of said suit including reasonable attorneys' fees in all proceedings, trials, investigations, appearances, appeals and in any bankruptcy proceeding or administrative proceeding shall be paid to the prevailing party by the non-prevailing party. In the event of default by either party hereto, the defaulting party shall be liable for all costs and expenses, including reasonable attorney's fees and costs incurred by the other party in enforcing its rights hereunder, whether litigation be instituted or not, at the trial court and appellate court level.
13. **Law of the Agreement; Jurisdiction and Venue.** The Parties agree that the laws of the State of Florida shall govern any dispute arising from or related to this Agreement. The Parties to this Agreement agree that venue and jurisdiction is mandated to lie only in the state courts located in Pinellas County, Florida. Removal of this case to federal court is not permitted. Litigation in federal court is precluded by agreement of the parties hereto. If, even though precluded by agreement of the Parties hereto, litigation arising from or based upon this contract should be mandated by a court of competent jurisdiction issued pursuant to a duly noticed hearing giving Pinellas County adequate time to respond and all of the benefits of due process to lie in the proper venue or jurisdiction of a federal court. The Parties further agree that entry into this agreement constitutes irrevocable consent that the exclusive venue for any such dispute shall lie solely in the state or county courts in and for Pinellas County, Florida. The Parties expressly and irrevocably waive any right(s) to removal of any such dispute to any federal court, unless the federal court has exclusive jurisdiction. Process in any action or proceeding referred to in this paragraph may be served on any party anywhere in the world, such party waives any argument that said party is not subject to the jurisdiction of the state courts located in Pinellas County, Florida and that the laws of the state of Florida.
14. **Entire Agreement.** This Agreement contains the entire agreement of the Parties and may not be changed except by written agreement duly executed by the Parties hereto. This Agreement supersedes any prior understandings or agreements between the Parties, and there are no representations, warranties, or oral agreements other than those expressly set forth herein.
15. **Assignment.** This Agreement shall not be assigned nor may any portion of the obligations contemplated in this Agreement be subcontracted to another party without prior written approval of City. No such approval by City of any assignment or subcontract shall be deemed in any event or in any manner to provide for the incurrence of any obligation of

City. All such assignments and subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that City shall deem necessary.

16. **Compliance with Licenses, Permits, and Applicable Laws.** In performing services hereunder, Advisor shall comply with all federal, state and local laws and regulations. Advisor shall be responsible for identifying and obtaining all permits necessary to complete the scope of services. Advisor shall be responsible for obtaining, at its sole cost and expense, all necessary license licenses and other governmental approvals required in order for Advisor to provide the type of services required hereunder.
17. **E-Verify:** system established by the U.S. Department of Homeland Security to determine the immigration and work-eligibility status of prospective employees.
18. The Advisor agrees to certify to the City that Advisor is in compliance with the federal E- Verify program, including obtaining written certification from all sub-Advisors who will participate in the performance of scope of services contemplated in this Agreement. All sub- Advisor certifications must be kept on file by the Advisor and made available to the state and/or the City upon request. The City reserves the right to take action against any Advisor deemed to be non-compliant; potential actions may include, but are not limited to, cancellation of this Agreement and/or suspending or debarring the Advisor from performing services for the City.
19. **Conflict of Interest.** Advisor shall notify City in writing of any commitments during the term of this Agreement, which may constitute a potential or actual conflict of interest with respect to the scope of services to be performed for the City.
20. **Corporate Status; Change of Ownership.** If Advisor is a non-governmental, corporate entity:
 - a. *Corporate Status.* Advisor shall ensure that the corporate status shall continuously be in good standing and active and current with the state of its incorporation and the State of Florida and at all times throughout the Term, and any renewal or extension hereof. Failure of the Advisor to keep its corporate status active and current shall constitute a material breach under the terms of this Agreement.
 - b. *Change of Ownership.* Advisor shall notify City immediately upon any change in corporate ownership or any substitution of the key professional assigned (the "Key Person") to perform under this Agreement ("Change of Ownership"). City shall have the option of cancelling this Agreement if a Change of Ownership is not suitable to it, provided however, no cancellation shall relieve the Advisor of its obligations to perform the work described herein or for liability for breach of same. A Change of Ownership means the occurrence of any one or more of the following: a sale, lease, or other disposition of 50% or more of the interest or assets of the company or corporation; a merger, reverse merger or consolidation with another entity; a transaction wherein a third-party becomes the beneficial owner having fifty (50%) percent or more interest in the corporation or company; or fifty (50%) percent or more of the total number of votes that may be cast for any act of the entity.

21. **Default.** Neither Party shall declare the other party in default of any provision of this Agreement without giving the other party at least ten (10) days advance written notice of intention to do so, during which time the other party shall have the opportunity to remedy the default. The notice shall specify the default with particularity.
22. **Dispute Resolution.** All disputes arising out of or in connection with this Agreement shall be attempted to be settled through good-faith negotiation between the Parties, followed if necessary within thirty (30) days by professionally-assisted mediation. Any mediator so designated must be acceptable to each Party. The mediation will be conducted as specified by the mediator and agreed upon by the Parties. The Parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute. The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either Party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings. Each Party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the Parties. Failing resolution through negotiation or mediation, either Party may file an action in a court of competent jurisdiction or other appropriate remedy available in law or equity as defined herein below.
23. **Jointly Drafted.** The Parties agree that this Agreement is entered into knowingly and voluntarily, after having the opportunity to fully discuss it with an attorney. Having had the opportunity to obtain the advice of legal counsel to review, comment upon, and redraft this Agreement, the Parties agree that this Agreement shall be construed as if the parties jointly prepared it so that any uncertainty or ambiguity shall not be interpreted against any one party and in favor of the other.
24. **Parties Acknowledgement; Parties Bound.** The Parties acknowledge that they have read this Agreement, and that they understand the terms and conditions herein and that the terms have been fully and completely explained to the Parties prior to the execution thereof. Each party acknowledges that the other party has made no warranties, representations, covenants, or agreements, express or implied, except as expressly contained in this Agreement. Further, the Parties have caused this Agreement to be executed on their respective behalf by the authorized officer whose signature appears below under their respective name, to be effective as of the date first written above. This Agreement shall inure to the benefit of and be binding upon the Parties, their successors, heirs, and personal representatives.
25. **Waiver.** The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.
26. **Time is of the Essence.** Time shall be of the essence of this Agreement.
27. **Survivability.** Any provision of this Agreement, which obligates any of the Parties to perform an obligation either before the commencement of the Term or after the expiration of the Term, or any renewal or extension thereof, shall be binding and enforceable notwithstanding that performance is not within the Term, and the same shall survive.
28. **Severability.** Whenever possible each provision and term of this Agreement will be interpreted in a manner to be effective and valid but if any provision or term of this Agreement is held to be prohibited or invalid, then such provision or term will be ineffective only to the extent of such prohibition or invalidity, without invalidating or affecting in any

manner whatsoever the remainder of such provision or term or the remaining provisions or terms of this Agreement.

29. **Counterparts.** This Agreement may be executed in a number of identical counterparts and a facsimile or electronic/digital copy shall be treated as an original. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
30. **Section and Paragraph Headings.** Captions or paragraph headings herein contained are for organizational convenience only and shall not be constructed as material provisions of this agreement or to limit any provisions hereunder.
31. **Cooperation; Supplementary Actions.** All Parties agree to cooperate fully and to execute any supplementary documents, and to take any additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement, and which are not inconsistent with its terms.
32. **Miscellaneous.** Whenever the context shall so require, all words in this Agreement of one gender shall be deemed to include the other gender.
33. **Incorporation of Recitals.** Each of the WHEREAS clauses listed above are hereby re- alleged and incorporated into this Agreement as if otherwise fully stated herein.
34. **Notice.** Whenever any notice, demand or request is required or permitted hereunder, such notice, demand or request shall be made in writing and shall be personally delivered to the individuals listed below, sent via prepaid courier or overnight courier, or deposited in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed to the addresses (and individuals) set forth below. No other form of electronic communications (Facebook, Twitter, Text) will be deemed Notice.

FOR THE CITY

Name: Jay Ravins

Address: 100 S Myrtle Ave, Clearwater, FL 33756

Title: Finance Director

FOR THE ADVISOR

Name: Natalie Sidor

Address: 150 2nd Ave N, Suite 400, St Petersburg, FL 33701

Title: Senior Managing Director

IN WITNESS WHEREOF, the parties have signed this agreement the day and year first above written.

ATTEST:

Countersigned:

CITY OF CLEARWATER, FLORIDA

Brian J. Aungst, Sr.
Mayor

By: _____
Jennifer Poirrier
City Manager

Approved as to form:

Attest:

David Margolis
City Attorney

Rosemarie Call
City Clerk

ATTEST:

PUBLIC RESOURCES ADVISORY GROUP, INC.

By: Wendell Gault

Date Signed: 2/13/24