

BLUFF/WATERFRONT MASTER PLAN FOR CITY OF CLEARWATER

This agreement made and entered into as of the ___ day of _____, 2016 by and between the City of Clearwater ("Client"), and HR&A Advisors, Inc., a corporation organized and existing under the laws of the State of New York ("Consultant"), who agree and contract as follows:

WITNESSETH THAT:

WHEREAS, Client desires to commission a master plan for the Bluff/Waterfront district of Downtown Clearwater, and

WHEREAS, Client desires to retain the Consultant to lead a multi-disciplinary team to complete said master plan;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. Contracting of the Consultant
Client hereby agrees to contract with Consultant, and the Consultant hereby agrees to perform services set forth hereinafter in connection with the Bluff/Waterfront Master Plan in accordance with the terms and conditions set forth herein.
2. Term of Contract
Consultant services for the scope of work set forth hereinafter will be completed by _____ subject to modification by mutual agreement by the parties hereto.
3. Scope of Services
The Consultant agrees to satisfactorily render and provide services hereinafter set forth in "Exhibit A, Scope of Services."
4. Disposition of Work Materials
Upon prompt payment of all sums due under this Agreement, all contract documents and similar work materials prepared by the Consultant in completing the scope of services shall be the property of Client. Notwithstanding any other provision to the contrary, the Consultant shall maintain copyright ownership of photographs and of all notes, terms and standard details included in all project-related documents, models, photographs, and other forms of expression created by the Consultant. Only with Client's prior written approval may Consultant use and reproduce its deliverables. The Consultant shall be permitted to retain copies of its deliverables and work product for its records and for its future professional endeavors, so long as Client is not specifically mentioned or utilized to promote such future professional endeavors. The Consultant grants Client a non-exclusive license to use and reproduce such models, photographs, and other forms of expressions created by the Consultant as long as payments due to the Consultant under this contract are made as provided herein.
5. Personnel
The Consultant represents that it has, or will secure, at its own expense, all personnel or subconsultants required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with Client. All of the services required hereunder will be performed by the Consultant or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized under State, federal and local law to perform such services.
6. Termination and Suspension for Cause
If, for any cause, the Consultant or Client shall fail to fulfill in a timely manner their obligations under this Agreement, or if the Consultant or Client shall violate any of the covenants, agreements, or stipulations of this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice. The Consultant shall be entitled to receive just and equitable compensation for work performed and expenses incurred as of the date of termination; likewise, Client shall be entitled to ownership of all documents, data, studies, surveys, drawings, maps,

models, photographs and reports or other material prepared by the Consultant under this Agreement for which it has compensated the Consultant.

If Client fails to make payments to the Consultant in accordance with this Agreement, in addition to the right of termination of this Agreement as set forth herein, at the Consultant's option and upon written notice to Client, it may suspend some or all performance of services under this Agreement and retain all Contract Documents and Work Materials for which payment is outstanding. In the event of a suspension of some or all services, retention of Contract Documents and Work Materials and/or the termination of the Agreement by the Consultant, the Consultant shall have no liability to Client for delay or damage caused Client because of such suspension of services. Before resuming services, the Consultant shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Consultant's services. The decision by the Consultant not to cease or suspend services or any portion thereof, or the decision by the Consultant to suspend certain but not all services under this Agreement shall not constitute a waiver of its right to suspend or terminate performance of any or all services under this Agreement so long as payments of undisputed amounts remain outstanding.

7. Changes

Client or Consultant may, from time to time, request changes in the terms of this Agreement. Such changes, including any increase or decrease in the amount of compensation due to the Consultant, shall be mutually agreed upon by the parties hereto and shall be executed and incorporated in written amendments to this Agreement.

8. Compensation

The cost of the Scope of Services shall not exceed \$378,000. The division of this not-to-exceed fee is described below in "Budget by Task." The cost of services will be invoiced by the Consultant on a percent completion basis. Services performed outside of the Scope of Services shall be invoiced based on the hourly rates established below in "Consultant Hourly Rates" and will include requests for reimbursement of expenses incurred by the Consultant and its subconsultants at cost. Invoices will be transmitted monthly by the Consultant to Client. Client shall remit payment for an approved invoice within 30 days of receipt of the invoice provided all work is performed satisfactorily as reasonably determined by Client.

9. Equal Employment Opportunity

The Consultant will not discriminate against any employee or applicant for employment with regard to race, religion, sex, color, national origin, age, sexual orientation, gender identity or disability. The Consultant will act to ensure that applicants are employed, and that employees are treated during employment, without regard to race, religion, sex, color, national origin, age sexual orientation, gender identity or disability.

10. Assignability

The Consultant shall not assign any interest in this Agreement and shall not transfer any interest in the same, whether by assignment or notation without the prior written consent of Client thereto; provided, however, that claims for money may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly by Client.

11. Conditions and Assurances

- A. Access to Records: Consultant agrees that Client or any of its duly authorized representatives shall have access to any books, documents, papers, and records of the Consultant for the purposes of making audit, examination, excerpt, and transcripts.
- B. Retention of Records: The Consultant will be required to comply with Section 119.0701, Florida Statutes, specifically to:
 - i. Keep and maintain public records required by the City of Clearwater to perform the service;
 - ii. Upon request from the City's Custodian of Records, provide the City of Clearwater with a copy of the requested records or allow the records to be

- inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 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 the contract term and following completion of the contract if the contractor does not transfer to the City of Clearwater; and
 - iv. Upon completion of the contract, transfer, at no cost, to the City of Clearwater all public records in possession of the contractor or keep and maintain public records required by the City of Clearwater to perform the service. If the Consultant transfers all public records to the City of Clearwater upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and 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 City of Clearwater, upon request from the City of Clearwater's Custodian of Public Records, in a format that is compatible with the information technology systems of the City of Clearwater.

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, ROSEMARIE CALL AT 727-562-4090, rosemarie.call@myclearwater.com, and/or 112 S. Osceola Ave., Clearwater, FL, 33617

12. Miscellaneous Provisions

- A. This Agreement shall be construed in accordance with the laws of the State of Florida, and venue for any dispute pertaining to this Agreement shall be in Pinellas County, Florida.
- B. In case one or more of the provisions in the Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such as invalidity, illegality, or non-enforceability, it shall not affect any other provision thereof, and this Agreement shall not be effective unless consented to, in writing, by both parties.
- C. Nothing contained herein shall be deemed by the parties hereto, nor any third parties, as creating the relationship of principal and agent, employer and employee, or as a partnership or joint venture between the parties. Consultant is the City's independent contractor, and nothing contained herein is intended to create any relationship other than that between the parties.
- D. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be constitute one and the same instrument.
- E. This Agreement shall be binding upon and inure to the benefit of each of the Consultant's and the Client's respective successors and assigns.

13. Indemnification

- A. Consultant shall indemnify, defend and hold harmless Client and its officers, employees, agents and permitted assigns from and against any and all suits, claims, losses, damages, charges, or expenses, whether direct or indirect, and liability of every name and nature to which they or any of them may be put or subjected by reason of any personal injury or damage to real or tangible property arising from or in connection with any acts or omissions on the part of the Consultant or arising from any breach by Consultant under this Agreement.
- B. Subject to Florida statutory limits on sovereign immunity, the City agrees to indemnify the Consultant and its officers, employees, agents, and permitted assigns from and against liability or expenses incurred on account of the negligent acts of the City, its employees,

servants, or agents in relation to this Agreement. Nothing contained herein, however, shall be construed as a waiver of or limitation of liability that the City may be entitled to under section 768.28, Florida Statutes.

In no event shall any officer, shareholder, member, employee or agent of Consultant or Client (or any of Consultant's or Client's affiliates) be personally liable for the performance of either party's obligations hereunder.

IN WITNESS WHEREOF, the City of Clearwater and the Consultant have executed this Agreement on this the ____ day of _____, 2016.

HR&A Advisors, Inc.

Cary Hirschstein, Partner

ATTEST

Date

IN WITNESS WHEREOF, the parties to the agreement have hereunto set their hands and seals and have executed this Agreement, the day and year first above written.

**CITY OF CLEARWATER
IN PINELLAS COUNTY, FLORIDA**

By:

Attest:

(SEAL)
William B. Horne, II,
City Manager

Rosemarie Call,
City Clerk

Countersigned:

Approved as to form:

George N. Cretekos,
Mayor

Camilo A. Soto,
Assistant City Attorney

Date