

CONSULTING SERVICES AGREEMENT

THIS AGREEMENT is made this 26th day of October 2021, between The Rotary Club of Windermere, Inc., located at, 11323 Winston Willow Ct., Windermere, FL 34786 (hereinafter referred to as "Owner") and ZHA Incorporated, a Florida Corporation, located at 601 N Magnolia Ave., Suite 100, Orlando, Florida 32801 (hereinafter "ZHA").

RECITALS

WHEREAS, Owner wishes to enter into an agreement with ZHA for the purpose of obtaining Owners Representative Services (as hereinafter defined), and

WHEREAS, ZHA is skilled in performing such Services, and

WHEREAS, ZHA has proposed to provide and/or perform these Services for a fee, and

WHEREAS, Owner wishes to accept the proposal,

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto do hereby agree as follows:

ARTICLE 1

APPOINTMENT

- 1.1 Owner hereby appoints ZHA its Owners Representative and ZHA accepts the appointment.
- 1.2 The **Scope of Services** (hereinafter "Services") to be performed by ZHA shall be in accordance with that described in "EXHIBIT A" attached hereto and as determined by Owner from time to time, as required by the Owner. This Agreement shall be deemed supplemented any and every time the parties agree on a task to be performed by ZHA for Owner, and the compensation to be paid therefor by Owner to ZHA, and BOTH PARTIES DULY EXECUTE some memorandum of that agreement. The format of such subsequent memoranda may vary.

ARTICLE 2
FEES AND PAYMENT

- 2.1 There is no retainer fee under this agreement, and no minimum fee. ZHA will perform Services and will be paid when, as and if Owner assigns ZHA tasks pursuant to Article 1.2 above.
- 2.2 Unless otherwise expressly provided at the time, and each time, the parties agree on a task, Owner shall pay ZHA for Services on a hourly not-to-exceed or fixed fee basis in accordance with the attached "EXHIBIT B".
- 2.3 When ZHA's fees are to be determined on a time and materials basis, the time expended by each ZHA employee while performing Services shall be multiplied by the appropriate rate from the table attached hereto as "EXHIBIT C", and the total dollars for all such employees shall constitute the "time" portion of ZHA's fees. The "materials" portion shall comprise all other direct expenses incurred by ZHA in performing the Services including, without limitation thereto, the cost of sub-consultants. The cost of sub-consultants will be approved in advance by Owner.
- 2.4 The rates shown on EXHIBIT C are subject to unilateral adjustment by ZHA on each anniversary of this Agreement, however, the maximum increase at each annual anniversary shall be four (4%) percent unless mutually agreed to in writing.
- 2.5 ZHA will bill Owner monthly for Services performed and Owner will pay all such invoices, without setoffs or deductions, within twenty-one (21) days of receipt.
- 2.6 Owner shall have the right to review such books and records of ZHA as may be appropriate to determine that "time" and "materials" charged to Owner were properly and solely charged to Owner. The review shall be in ZHA's office in Orlando during ZHA's normal business hours, at anytime this Agreement is in effect and for one year thereafter.

ARTICLE 3
EFFECTIVE DATE AND TERM

- 3.1 This Agreement shall become effective as of the date first above written and, the terms of this Agreement shall be continuous for all Services.
- 3.2 Notwithstanding 3.1 above, any Services which were performed prior to the effective date of this Agreement shall be deemed to have been performed under this Agreement subsequent to its effectiveness.

ARTICLE 4
OWNER'S RESPONSIBILITIES

- 4.1 Owner will provide ZHA with copies of all records, correspondence, data, projections, drawings and other existing documents and information identified by ZHA and in the possession of Owner and which are reasonably required for carrying out the Services.
- 4.2 Owner shall provide ZHA access to all technical personnel, including without limitation thereto employees and representatives of Owner and Owner's other consultants, sub-consultants, contractors, and subcontractors who, in the reasonable opinion of ZHA, are capable of providing information required by ZHA in carrying out its responsibilities hereunder. Such access shall be at reasonable times and subject to the availability of said technical personnel and shall be without cost to ZHA.
- 4.3 Owner will provide reasonable assistance to ZHA in ZHA's applications to any governmental agency, or quasi-governmental agency, for any approvals required to perform or provide the Services.
- 4.4 Owner will arrange access upon public and private property for ZHA, as required to perform the Services.

- 4.5 Owner will make all decisions requested by ZHA as promptly as possible so as not to impede or delay the Services.

ARTICLE 5

THE RIGHTS AND DUTIES OF ZHA

- 5.1 In the performance of the Services, ZHA will exercise skill, care and diligence, and will carry out all its responsibilities, in accordance with generally recognized standards of professional firms with respect to Services of a similar nature. ZHA will use good faith, reasonable efforts to comply with all applicable laws, rules, regulations and ordinances of all governmental authorities having jurisdiction over the project.
- 5.2 ZHA will, in all professional matters, act as a faithful adviser to Owner and, insofar as any of its duties are discretionary, act as an Owner's Representative as between Owner and third parties.
- 5.3 ZHA shall treat all information obtained from Owner in connection with the Services, as confidential proprietary information of Owner and shall not permit its release to other parties or make any other public announcement or publicity releases without prior written authorization. ZHA shall cause all sub-consultants to observe the covenants set forth in this Section 5.3.
- 5.4 If the Services shall include administration of construction contract(s), ZHA shall have no control over and shall not be responsible for the contractors' construction means, methods, techniques, sequences or procedures, or for the contractors' safety precautions and programs, provided, however, ZHA shall oversee the work and determine whether the work is being performed in accordance with the construction contract. Upon discovering any error in the work, any safety concern or failure to comply with the construction contract, ZHA shall inform the contractor and Owner. Except as may be otherwise expressly provided in this Agreement, ZHA shall not be responsible for the contractors' timely performance or failure to carry out the work in accordance with the Contract Documents, except to the extent any delay or failure to perform is a result of ZHA's failure to perform hereunder. However, in the case where the Services include

administration of construction contract(s), ZHA shall have the responsibility to Owner, and the authority from Owner, to reject work which does not conform to the Contract Documents.

ARTICLE 6
REPRESENTATIVES

- 6.1 Owner shall, by written notice to ZHA, appoint an individual who will be its sole authorized representative for the receipt of routine correspondence related to the Services, and who will be fully authorized to act on behalf of Owner.
- 6.2 ZHA shall, by written notice to Owner, appoint an individual who will be ZHA's authorized representative for the receipt of routine requests, questions, instructions and other Services-related correspondence. This individual will be authorized to execute any and all instruments requiring ZHA's signature except changes or amendments to this Agreement. ZHA does, however, reserve the right to further restrict the authority of this individual by written notice to Owner.

ARTICLE 7
SUBCONSULTANTS

- 7.1 ZHA will be responsible for coordinating the Services, regardless of whether performed by ZHA's own employees or by sub-consultants of ZHA, and ZHA shall be responsible to Owner for any ZHA Services furnished by any ZHA sub-consultant to the same extent as if ZHA had furnished the said Services itself. ZHA shall also require each of its sub-consultants to be bound to and assume toward ZHA all the obligations and responsibilities which ZHA assumes toward Owner under this Agreement. Owner will afford ZHA's sub-consultants' employees providing any of the Services the same access, courtesies and privileges as ZHA's employees, while said sub-consultants' employees are providing said Services.

ARTICLE 8
OWNERSHIP OF PLANS & DOCUMENTS, TITLE TO WORK

- 8.1 All models, drawings, plans, specifications and reports, including but not limited to information and data stored in computers, developed by or for ZHA in connection with the Services, shall become the property of Owner.

ARTICLE 9
TERMINATION FOR CAUSE

- 9.1 This Agreement may be terminated by Owner, if ZHA shall fail to perform in accordance with its terms and conditions and fail to remedy such default within thirty (30) days of written notice. If ZHA is terminated for default, ZHA will not be entitled to any additional compensation than that already earned through the date of termination. ZHA will not be entitled to compensation for the efforts required to remedy any ZHA default.
- 9.2 ZHA may terminate this Agreement if Owner shall default in fulfilling any of the terms or conditions to be fulfilled by it hereunder, and shall fail to remedy such default within thirty (30) days of written notice, unless such default cannot be reasonably cured within thirty (30) days, in which event, such thirty (30) day period shall be extended as reasonably necessary to complete any remedy.

ARTICLE 10
TERMINATION BY NOTICE

- 10.1 Owner may for its convenience terminate ZHA's Services at any time by giving ZHA thirty (30) days prior written notice of such termination whereupon ZHA shall take immediate steps to:
1. Stop the performance of ZHA's Services hereunder except as may be necessary to carry out such termination;
 2. Terminate, to the extent possible and at Owner's written request, outstanding contracts, subcontracts or purchase orders and the like; and

- 3 Take any other action toward termination of ZHA's Services, which Owner may reasonably direct in writing.
- 10.2 In the event of termination as above provided, Owner shall pay to ZHA the fees due to ZHA for Services rendered up to the termination date and shall reimburse ZHA for ZHA's out of pocket expenses associated with the termination and for any penalties, forfeitures, restocking charges or the like actually suffered by ZHA as a result of the termination.

ARTICLE 11
FORCE MAJEURE

- 11.1 In the event any Act of God, civil commotion, riot, war, weather, natural disaster, industrial action, or any other circumstances over which ZHA has no control, causes cessation of or substantial interference with the performance of the Services hereunder for a period in excess of six (6) consecutive months, the duty of ZHA to provide the Services shall have ceased unless reasonable compensation for resumption of the Services is agreed to by the parties.

ARTICLE 12
FAIR OPERATION OF CONTRACT

- 12.1 In entering this Agreement, Owner and ZHA recognize that it is impracticable to make provisions for every contingency, which may arise during the term of the Agreement. Owner and ZHA concur in the principle that the agreement shall operate between them with fairness and without undue detriment to a substantial interest of either Owner or ZHA and if, in the course of the performance of the Agreement an infringement of this principle is anticipated or disclosed, then Owner and ZHA shall promptly consult together in good faith in an endeavor to agree upon such action as may be necessary to remove the cause or causes of such infringement.

ARTICLE 13
ARBITRATION

- 13.1 If any question, difference or dispute shall arise between the parties hereto or any person, persons, or corporation claiming under them respectively, concerning or touching the construction of any clause herein contained, or of the rights, duties or liabilities of the parties hereto, or in any way touching or arising out of these presents, the same shall be referred to the determination of a single arbitrator if the parties can agree on one or otherwise to two arbitrators (one to be appointed by each party) and an umpire to be appointed by such arbitrators.
- 13.2 Without limiting the generality of this arbitration article, it is expressly agreed that any ZHA fee, or portion of a fee, in dispute more than twenty-one (21) days shall be subject to Arbitration.

ARTICLE 14
INDEMNIFICATION

- 14.1 Owner shall indemnify and save harmless ZHA, its shareholders, partners, officers, employees, consultants, sub-consultants, agents and assigns with respect to any and all direct claims, liabilities, losses, damages, demands and causes for action of every kind or character, whether in law or in equity, brought by any third party (including without limitation thereto sub-consultants of ZHA) and arising or alleged to arise directly out of any negligent act or failure to act of Owner.
- 14.2 ZHA shall indemnify and save harmless Owner, its elected officials, officers, employees, agents and assigns with respect to any and all claims, liabilities, losses, damages, demands, and causes of action of every kind or character, whether in law or in equity, brought by any third party and arising or alleged to arise, directly out of any negligent act or failure to act of ZHA in ZHA's performance of the Services.

ARTICLE 15
NONDISCRIMINATION

15.1 In performing the Services, ZHA will not knowingly violate any applicable laws, executive orders, or regulations prohibiting discrimination in employment.

ARTICLE 16
NO WAIVER

16.1 No consent or waiver, express or implied, by either party, to or of any breach or default by the other in its performance of any of its obligations hereunder, shall be deemed or construed to be a consent or waiver to or of any other or future breach or default by such party. Failure on the part of either party to complain or declare the other party in default, regardless of how long such failure continues, shall not constitute a waiver of the rights of such party.

ARTICLE 17
NO THIRD PARTY RIGHTS

17.1 It is not the intention of the parties to create hereby any contractual relationship with, or duties, obligations or causes of action in favor of, any third party and nothing contained in this Agreement shall be so construed.

ARTICLE 18
INDEPENDENT CONTRACTOR

18.1 ZHA is, and while performing the Services will continue to be, an independent contractor.

18.2 ZHA shall not be an agent of Owner, except as may be otherwise expressly provided herein, and only to the extent so provided.

18.3 ZHA's employees are not, and while performing any of the Services they shall not be deemed to be, employees of Owner.

ARTICLE 19
SUCCESSORS AND ASSIGNS

19.1 Owner and ZHA, respectively, bind themselves, their successors and assigns to the other party to this Agreement, and to the other party's successors and assigns with respect to all the terms and provisions of this Agreement. ZHA may not assign or transfer any interest in this Agreement without the prior written consent of Owner.

ARTICLE 20
NOTICES

20.1 Any notice required or permitted hereunder shall be valid and effectively given if conspicuously marked "Contractual Notice" and sent by telefax, telex, cable or by registered or certified mail, overnight delivery, postage prepaid, or personally delivered to the appropriate address on page 1 of the Agreement or such other address as may be specified by the parties from time to time.

ARTICLE 21
APPLICABLE LAW

21.1 This Agreement shall be construed and enforced in accordance with the laws of the State of Florida.

ARTICLE 22

CAPTIONS

22.1 The captions of the Articles in this Agreement are used only for convenience and for reference and they do not define, limit or describe the scope or intent of this Agreement or of any Article of this Agreement.

ARTICLE 23

SEVERABILITY

23.1 In the event that any of the provisions (or portions or applications thereof) of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions (or portions or applications thereof) shall not be affected thereby; and Owner and ZHA shall negotiate an equitable adjustment in the affected provisions with a view toward effecting, as near as possible, the original purpose of this Agreement.

ARTICLE 24
ENTIRE AGREEMENT

24.1 This Agreement, including "EXHIBIT A", "EXHIBIT B" and "EXHIBIT C", constitutes the entire agreement between the parties hereto relating to the subject matter hereof and supersedes and cancels any previous agreements or understandings. Except as provided in Article 1.2, this Agreement may be modified only by a subsequent writing signed by the parties with the same formalities as this Agreement.

IN WITNESS WHEREOF, the parties hereto have entered into **THIS AGREEMENT** effective as of the day and year first hereinabove written.

ZHA INCORPORATED

The Rotary Club of Windermere, Inc.

BY: _____

9 Dec 2021

TITLE: President/CEO

BY: _____

TITLE: President

EXHIBIT A

SCOPE OF SERVICES

Healthy West Orange Pavilion OWNER'S REPRESENTATIVE SERVICES November 11, 2021

GENERAL INFORMATION:

The Rotary Club of Windermere, Inc. (OWNER) requires the services of a qualified Owner's Representative (OR) to provide Scope Development, Budget Development and Management and Oversight of the design and construction of a covered pavilion with a stage, concessions, restrooms and parking on property at the corner of Forest St. and Fifth Ave. in Windermere, Florida.

Project Description. The Project includes a covered stage furnished with a retractable projection screen and appropriate lighting and sound equipment, men's and women's restrooms (a minimum of three stalls in each plus a urinal in the men's restroom), two family restrooms, and concession stand with an equipped kitchen in downtown Windermere at the corner of Forest Street and Fifth Avenue where the existing community building stands. The Project will include the demolition of the existing community building, installation of new septic drainfield and tank, repaving and refurbishing of basketball courts if necessary, appropriate landscaping, and potentially redesigning the parking area. Behind the pavilion will be additional parking and beside and around the pavilion will be a pocket park with exercise stations. The new pavilion will be named the "Healthy West Orange Pavilion" and will support the Town in meeting the goals of Healthy West Orange by providing a central location for health and wellness programs to be offered to residents of West Orange County. The Healthy West Orange logo and/or name will be prominently and permanently placed on the pavilion and pocket park locations and signage will be included recognizing the West Orange Healthcare District as the benefactor and funder for the pavilion.

GENERAL SCOPE OF WORK

Services will include the following to the extent approved by the Rotary

- Develop a Design Criteria Package (DCP) to solicit design-build proposals from selected qualified firms.
- Review design-build proposals and provide Rotary an evaluation of the proposals.
- Assist in negotiation of contract with the selected Design-build firm.
- Review the design phase submissions for adherence to the DCP and schedule.
- Monitor permitting process.
- Make 2-4 site visits to the Project site per month or as needed, with one at or near the time that each request for disbursement of funds is received, to evaluate the progress of the Project and confirm conformance and compliance with the construction drawings and specifications submitted, and to meet with the Design-builder at the Project Site to discuss

the status of the Design-builder's work.

- After each site visit, prepare an email report which will include an estimate of the percentage of overall completion of the Project with comments on the request for disbursement of construction funds for each draw period; a comparison of construction advancement to the Design-builder's construction progress schedule; a list of any construction deficiencies; photographic documentation of the work as it progresses and any specific deficiencies and provide recommendations for corrections; and a list and update of any change orders.
- Serve as the representative on behalf of the Rotary, communicate with the Design-builder and Architect, and report to the Rotary matters concerning the Project.
- Review change orders requested by the Rotary or prepared by the Design-builder and present to the Rotary for discussion and approval; also comment on the general impact the change orders may have on the Project time schedule and Project cost. Provide recommendations during construction for potential changes to the Work.
- Review pay requests for work by the Design-builder and make recommendations to the Rotary for approval of payment or partial payment.
- Be available for and participate in conferences with Rotary, Town, and/or Design-builder as needed or requested by the Rotary or Town or Town's representatives.
- Comment on the type and quantity of materials stored on-site.
- Advise when the work has achieved substantial completion and conduct a substantial completion inspection with Rotary and Design-builder. Assist with Design-builder's preparation of a punch list and determine an estimate of the dollar amount of the work necessary to complete the punch list in order that the estimated cost of punch list work may be withheld from funding until all punch list items are satisfactorily completed.
- Advise when the work has achieved final completion and conduct a final completion inspection with Rotary and Design-builder. Advise Rotary on Project close out documentation.
- In addition to the services listed above this contract shall include the services as outlined in RFG 2021-01 Owner's Representative Services for Health West Orange Pavilion.

Schedule

The preliminary schedule is as follows:

Develop Design Criteria Package	1 week
Design -builder Proposal development	4 weeks
Select and negotiate Design-builder	2 weeks
Design Development	3 weeks
Permit Document Development	3 weeks
Permitting	4 weeks
Construction	20 weeks

Closeout
Total Duration

2 weeks
39 weeks

EXHIBIT B

FEE AND PAYMENT SCHEDULE

**Healthy West Orange Pavilion
OWNER'S REPRESENTATIVE SERVICES
November 11, 2021**

Based upon the tasks described in Exhibit A, Scope of Services, the fees to accomplish the work will be billed on not-to-exceed hourly fee monthly basis, with the cost of reimbursable items to be billed at direct cost. For the purposes of this fee proposal, the fees were generated based on the man-hour forecast schedule and the hourly rates included as Exhibit C. The hours estimated to complete the tasks are based upon the durations stipulated in the Scope of Services, normal working hours and conditions and do not include exhaustive negotiations of contracts, change orders or issues in dispute. Changes in the scope requested by Owner will be identified by ZHA and provided to the OWNER as a proposed change of scope for their review and approval. Any change in fee will be in writing and approved by both parties. The fee is as follows:

OWNER'S REPRESENTATIVE SERVICES

Task I DCP Development & Selection Phase	\$ 5,000
Task II Design & Permitting	\$ 7,000
Task III Construction & Closeout Phase	<u>\$13,000</u>
SUBTOTAL FEE	\$25,000
Estimated Reimbursable Travel Expenses	<u>\$1,000</u>
TOTAL FEE	\$26,000

On or about the tenth day of each month during the term of this Agreement, ZHA will invoice the Owner in accordance with the monthly fees identified on the man-hour schedule.

ZHA will also include in its monthly invoices to the Owner all of ZHA's actual travel expenses reasonably incurred in providing services during the preceding month. Expenses outside the scope of work, such as presentation materials, will be invoiced at their direct cost.

This Agreement will expire when the services are completed and ZHA's final invoice is paid in full. The Owner may add Additional Services to this Agreement based upon an agreed upon Scope of Services and fees.