

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, entered into this 18th day of April, 2022 by and between **THE TOWN OF PALM BEACH**, a political subdivision of the State of Florida, hereinafter referred to as the “TOWN”, and **ZONECO, LLC**, an Ohio limited liability company with address 455 Delta Avenue, Suite 203, Cincinnati, OH 45226, hereinafter referred to as the “CONSULTANT”.

WITNESSETH

That the TOWN and the CONSULTANT, in consideration of their mutual covenants, herein agree with respect to the performance of Zoning Code Reform Services by the CONSULTANT and the payment for those services by the TOWN as set forth below and in individual Work Orders. This agreement shall be referred to as the “MASTER AGREEMENT” under which future Purchase Orders will apply.

The CONSULTANT shall provide the TOWN with zoning code reform services and such other related services as defined in specific Purchase Orders for each task or project. The CONSULTANT is retained by the TOWN to perform these services under this non-exclusive continuing contract with the TOWN.

SECTION I – PROJECT(S)

The project(s) anticipated deliverables shall be identified by the TOWN and communicated in writing to the CONSULTANT. The CONSULTANT services required shall be identified within a proposed Scope of Services document to be prepared by the CONSULTANT and approved by the TOWN’s representative. Each Purchase Order issued by the TOWN upon approval of the proposed Scope of Services will be uniquely numbered and shall be subject to the TOWN’s adopted purchasing procedures.

Services required of the CONSULTANT for the project will be described in other appropriate sections of this Agreement and quantified in individual Purchase Orders.

The categories of the Zoning Code Reform Services that may be required are as follows:

1. Project Initiation & Orientation
2. Public Outreach & Engagement Strategy
3. Zoning and Comprehensive Plan Review
4. Code Development

5. Additional services as may be requested by the Town.

Note: All deliverables are subject to modification by the Town.

SECTION II – SCOPE OF SERVICES

2.1 Basic Services

Upon written notice from the Director of Planning Zoning and Building or his designee to proceed on a Purchase Order for an agreed upon Scope of Services, the CONSULTANT agrees to provide complete Professional Zoning Code Reform services for any portion, or all of the phases enumerated hereinafter. The CONSULTANT agrees to coordinate its effort with that of any other zoning CONSULTANTS to assure a coordinated and complete work.

2.1.1 Phase I - Schematic Design and Programming

- A. The CONSULTANT shall confer with representatives of the Town to determine the full scope of the Task or Project that will meet the requirements within the allocated funds in the Purchase Order.
- B. The CONSULTANT shall use proper and adequate control to provide an increased level of confidence to the TOWN that the Task or Proposed Project may be accomplished within the allocated funds in the Purchase Order.
- C. The CONSULTANT shall prepare a Report, comprising the Project Timetable Planning Summary (if requested), and the Cost Estimate for the Task or Project.
- D. The Proposed Project timetable shall consist of a schedule showing the proposed completion date on each Phase of the Task or Project, and proposed date of completion.
- E. The Planning Summary (if requested) shall consist of a vicinity plan showing Task or Project orientation, and a brief summary of all pertinent planning criteria used for the Project.
- F. The CONSULTANT shall prepare a Project Management Plan (PMP) identifying project scope, schedule, team members, contact information, stakeholders, deliverables, etc.
- G. The CONSULTANT's Cost Estimate shall be based on hourly rates, that include hard and soft costs but not limited to fixed equipment, professional fees, travel and any other related cost (if any).

- I. The CONSULTANT shall submit and present all documents required under each Task or Project, for approval by the TOWN and shall not proceed with the next Task or Project until directed in writing by the TOWN.

SECTION III – TOWN OBLIGATIONS

The TOWN agrees to provide the following material, data, or services as required in connection with the work to be performed under this Agreement:

- A. Provide the CONSULTANT with available data, and other information in the possession of the TOWN that are pertinent to the project and allowed to be shared.
- B. The TOWN shall assist in making provisions for the CONSULTANT to enter upon public or private property as required for the CONSULTANT to perform its services.

SECTION IV – ALLOTMENT OF PROJECT WORKLOAD TO THE SELECTED CONTINUING ZONING CODE REFORM AND PROJECT MANAGEMENT SERVICE FIRM

The TOWN, through its designated representative, shall, in its sole discretion, assign work to the CONSULTING firm as appropriate. The “Master Agreement” in no way guarantees any future work. CONSULTANT shall have no right to appeal or challenge the TOWN’S decision regarding distribution of work.

SECTION V – PERFORMANCE OF WORK

The CONSULTANT agrees to perform all necessary Professional Zoning Code Reform and project management services in connection with the assigned task(s) or project(s) as required and as set forth in the following:

- A. General
 1. The CONSULTANT will endeavor not to duplicate any previous work done on any project. Before issuance of a Purchase Order and written authorization to proceed, the CONSULTANT shall consult with the TOWN to clarify and define the TOWN’s requirements and deliverables for the project and review all available data. TOWN may request the

CONSULTANT to prepare a written proposed Scope of Services as part of this process.

2. The CONSULTANT shall attend meetings with the TOWN and its representatives, upon request. Meetings not included in the Purchase Order shall be treated as additional services, subject to a change order or additional Purchase Order, when such meetings are related to approved Purchase Orders.
3. In order to accomplish the work described under this Agreement under the time frames and conditions set forth in this Agreement, the CONSULTANT shall observe the following requirements:
 - a. The CONSULTANT will complete his work on the project within the time allowed by maintaining an adequate staff and other employees as may be required on the work at all times. Alternatively, the CONSULTANT may contract for such services in lieu of providing the same as employees of the CONSULTANT.
 - b. The CONSULTANT shall comply with all federal, state, and local laws applicable to this project(s). The CONSULTANT's work product shall conform with all applicable federal, state and local laws applicable to this project(s).
 - c. The CONSULTANT shall prepare or provide for all necessary documents as necessary for each project.
 - d. The CONSULTANT shall reply in a timely manner to the TOWN's requests for additional information related to the CONSULTANT's work product. The CONSULTANT shall cooperate fully with the TOWN in order that all phases of the work may be properly scheduled and coordinated.
 - e. Compensation to the CONSULTANT for basic services shall be in accordance with each Purchase Order, as mutually agreed upon by the CONSULTANT and the TOWN. Schedule of current hourly billing rates are included in "Exhibit A"

incorporated herein by reference and attached hereto, and will be included as part of each Purchase Order when approved. CONSULTANT shall provide a resource plan, time to complete, and other information as needed relative to the Purchase Order to support the TOWN's effective management of the TOWN's business.

SECTION VI – TIME FOR COMPLETION

The time for completion of each project shall be defined in the Purchase Order.

SECTION VII – COMPENSATION

The TOWN agrees to pay, and the CONSULTANT agrees to accept, for services rendered pursuant to this Agreement, fees in accordance with the following Professional Services Fee:

The basic compensation shall be agreed upon prior to issuance of each Purchase Order and the work hours for each discipline and work schedule shall be included in the Purchase Order. All hourly rates shall be in accordance with the Schedule of Billing Rates, which is incorporated herein by reference and attached hereto as Exhibit A, and is to be completed by the CONSULTANT and submitted to the TOWN upon execution of this Agreement. The TOWN may accept or reject any hourly rate contained therein prior to Agreement execution and will attempt to negotiate any rejected hourly rate. Acceptance of the proposed Schedule of Billing Rates shall be in the TOWN's sole discretion. CONSULTANT may request an amendment to the resources, units or rates contained within the Schedule of Billing Rates, but may not do so any less often than annually following the execution of the Agreement or the approval of a revised Schedule of Billing Rates by both parties.

SECTION VIII – PAYMENTS

The TOWN shall make monthly partial payments to the CONSULTANT as provided for in the Purchase Order. Unless otherwise stated in the Purchase Order, the CONSULTANT shall submit duly certified invoices to the TOWN's Representative for review monthly. Invoices shall

indicate the Purchase Order, and deliverables provided. The TOWN shall pay each approved invoice within thirty (30) days of receipt thereof.

SECTION IX – RIGHT OF DECISIONS

All services shall be performed by the CONSULTANT to the satisfaction of the TOWN's Representative who shall decide all questions, difficulties, and disputes of whatever nature which may arise under or by reason of this Agreement, according to the prosecution and fulfillment of the service hereunder, and the character, quality, amount and value thereof. The TOWN's Representative's decision upon all claims, questions and disputes shall be final, conclusive and binding.

Adjustments of compensation and contract time because of any major changes in the work that might become necessary or be deemed desirable as the work progresses shall be reviewed and approved by the TOWN's Representative prior to the CONSULTANT beginning its work on such changes.

SECTION X – NOTICES

Any notices, reports or other written communications from the CONSULTANT to the TOWN shall be considered delivered when posted by certified mail or delivered in person to the TOWN's Representative, or by email. Any notices, reports or other communications from the TOWN to the CONSULTANT shall be considered delivered when posted by certified mail to the CONSULTANT at the last address left on file with the TOWN or delivered in person to said CONSULTANT or his authorized representative. Unless TOWN is subsequently notified otherwise, the CONSULTANT's address shall be as shown in this Agreement.

SECTION XI– TERMINATION

Either party may terminate this Master Agreement for any reason upon thirty (30) days written notice to the other party, except that in the event the CONSULTANT terminates this agreement, such termination shall not be effective, absent the TOWN's consent, until the CONSULTANT's completion or partial completion, to the TOWN's satisfaction, of any Purchase Order in progress.

SECTION XII – AUDIT RIGHTS

The TOWN reserves the right to audit the records of the CONSULTANT related to this Agreement at any time during the prosecution of the work included herein and for a period of three years after final payment is made.

SECTION XIII – SUBLETTING

The CONSULTANT shall not sublet, assign, or transfer any work under this Agreement without the written consent of the TOWN. When applicable and upon receipt of such consent in writing, the CONSULTANT shall cause the names of the firms responsible for the major portions of each separate specialty of the work to be inserted on the reports or other data, including a description of their respective contribution to the work product.

SECTION XIV – WARRANTY

The CONSULTANT warrants that he has not employed or retained any company or person other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage fee, gifts or any other considerations, contingent upon or resulting from the award or making of this Agreement. For the CONSULTANT's breach of violation of this warranty, the TOWN shall have the right to terminate this Agreement without liability.

SECTION XV – DURATION OF AGREEMENT

The Master Agreement shall remain in full force and effect for a period of three years after the date of, or until completion of all project phases of the then Work Orders in progress, or unless otherwise terminated by mutual consent of the parties hereto, or terminated pursuant to Section XI. By mutual agreement of both parties, this Agreement may be extended for two additional periods of one year each.

SECTION XVI – INSURANCE

The CONSULTANT shall not commence work under this Agreement until all insurance required under this Agreement has been obtained and such insurance has been approved by the TOWN.

All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The CONSULTANT shall furnish Certificates of Insurance to the TOWN'S representative. The Certificates shall clearly indicate that the CONSULTANT has obtained insurance of the type, amount, and classification as required for strict compliance with this Agreement and that no material change or cancellation of the insurance shall be provide immediate written notice to the TOWN'S representative. Compliance with the foregoing requirements shall not relieve the CONSULTANT of their liability and obligations under this Agreement.

CONSULTANT shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverages, limits, including endorsements, as described herein. The requirements contained herein, as well as TOWN'S review or acceptance of insurance maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONSULTANT under the contract.

The CONSULTANT shall provide insurance coverage as per Exhibit B.

The CONSULTANT shall provide original certificates of such coverage prior to engaging in any activities under the contract. No work can be started until the certificates are submitted and approved by the Town.

SECTION XVII – INDEMNIFICATION

To the fullest extent allowed by law the CONSULTANT shall protect, reimburse, indemnify and hold harmless the TOWN, and the TOWN's officers, agents, employees free and harmless from and against any and all claims, losses, penalties, damages, settlements, costs, charges, attorneys or other professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, cause or causes of action of every kind and character to the extent caused by the negligent acts, errors or omissions of the CONSULTANT in the performance of this Contract and the Work performed hereunder in a total amount not to exceed the fees earned for the Work performed under this Contract. Without limiting the generality of the foregoing,

CONSULTANT's indemnity shall include all claims, damages, losses, or expense arising out of or related to personal injury, death, damages to property, actual or alleged infringement of any patent, trademark, copyright, proprietary information, or applications of any thereof, or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or order of any court. Notwithstanding the foregoing, CONSULTANT's indemnity shall not extend to liability for damages to persons or property to the extent such damage was caused by any act, omission, or default of the TOWN, or by the TOWN's officers, agents and employees. Notwithstanding the foregoing or anything to the contrary contained herein, the foregoing indemnity and hold harmless agreement shall not be applicable to or be deemed to extend to, and CONSULTANT does not agree to indemnify and hold harmless the TOWN for, any losses, penalties, damages, settlements, costs, charges, attorneys or other professional fees, or other expenses or liabilities resulting from any claims made by any property owner against the TOWN pursuant to the Bert J. Harris, Jr., Private Property Rights Protection Act, s. 70.001, Florida Statutes.

A professional employed by a business entity, or an agent of the business entity is not individually liable for damages resulting from negligence occurring within the course and scope of a professional services contract. any damages are solely economic in nature and the damages do not extend to personal injuries or property not subject to the contract.

CONSULTANT acknowledges and agrees that TOWN would not enter into a contract without this indemnification of TOWN by CONSULTANT, and that TOWN'S entering into a contract shall constitute good and sufficient consideration for this indemnification. These provisions shall survive the expiration or earlier termination of the Contract for a period of one (1) year. Nothing in this Contract shall be construed to affect in any way the TOWN'S rights, privileges, and immunities as set forth in Florida Statutes 768.28.

SECTION XVIII – SAFETY

In accordance with generally accepted practices, the CONSULTANT shall report any observed job site safety violations to the TOWN and to the Contractor's Representative.

Although the Consultant accepts this responsibility, it is acknowledged by the parties that the Engineer does not have an expertise in job site safety.

SECTION XIX-CONTRACTUAL AGREEMENT

RFQ No. 2022-10 Planning Services for Code Reform for Town of Palm Beach is included and incorporated herewith in its entirety as Exhibit C. The order of contractual precedence will be this Agreement document, original Terms and conditions, and CONSULTANT's response.

SECTION XX-PUBLIC RECORDS

Upon award made by Town Council, proposals become "public records" and shall be subject to public disclosure consistent with Chapter 119 Florida Statutes.

SECTION XXI-NEWS RELEASES

The CONSULTANT shall obtain the prior approval of the Town Manager's Office or the prior approval of the office of the Director of Planning Zoning and Building of all news releases or other publicity pertaining to Purchase orders for each project.

SECTION XXII-FAMILIARITY WITH LAWS

The CONSULTANT is assumed to be familiar with all federal, state and local laws, ordinances, rules and regulations that may in any manner affect the work. The failure to familiarize itself with applicable laws will in no way relieve CONSULTANT from responsibility.

SECTION XXIII-PERMITS, TAXES, LICENSES

The CONSULTANT shall at its own expense obtain all necessary permits, pay all licenses, fees and taxes, required to comply with all local ordinances, state and federal laws, rules and regulations applicable to business to be carried out under the contract. Proposers, both corporate and individual must be fully licensed and certified in the State of Florida at the time of this Agreement.

SECTION XXIV – CHOICE OF LAW AND VENUE

This Agreement shall be governed by the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this Agreement shall be in Palm Beach County, Florida, or in the event of a federal jurisdiction, in the United States District Court for the Southern District of Florida.

SECTION XXV – ENTIRETY OF AGREEMENT

This writing embodies the entire Agreement and understanding between the parties hereto, and there are no other Agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto.

SECTION XXVI - SEVERABILITY

In the event any provision, section or paragraph of this Agreement is determined by a court of competent jurisdiction to be void, illegal, or unenforceable, the remaining portions not found to be void, illegal, or unenforceable, shall remain in full force and effect.

SECTION XXVII – UNDERSTANDING OF RELATIONSHIP

Although CONSULTANT is affiliated with the law firm of Suder, LLC, its principal place of business being located at 455 Delta Avenue, Suite 203, Cincinnati, Ohio 45226, and although some of CONSULTANT’S employees and principals may be attorneys who may be separately engaged to provide legal representation in a state where they are licensed to practice law, CONSULTANT is not a law firm and does not provide legal representation or legal services, including but not limited to, in the State of Florida. The TOWN understands, acknowledges, and agrees that engaging or otherwise contracting with CONSULTANT or its principals or employees does not form an attorney-client relationship and, as such, the protections of the attorney-client relationship do not apply to the provision of the services, or any communication related thereto. The TOWN will provide or separately engage legal counsel of its choosing to review all work performed by CONSULTANT under this Agreement for compliance with all applicable local, state, and federal laws.

IN WITNESS WHEREOF the parties hereto have set their hand to and executed this Agreement this 18th day of April, 2022.

CONSULTANT:

ZoneCo, LLC

455 Delta Avenue, Suite 203

Cincinnati, OH 45226

TOWN:

Town of Palm Beach

360 South County Road

Palm Beach, Florida 33480

BY: [Signature]
Sean Sudel, Lead Principal

BY: [Signature]
John C. Randolph, Esq., Attorney
For Legal Form and Sufficiency

BY: [Signature]
Kirk W. Blouin, Town Manager
Town of Palm Beach

Title: LEAD PRINCIPAL

WITNESS: [Signature]

ATTEST:
[Signature]
Acting Town Clerk, Town of Palm Beach

(Town Seal)

