

**DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY
PROJECT CONSULTANCY AND DESIGN SERVICES FUNDING AGREEMENT**

THIS AGREEMENT is made this _____ day of _____, 2024, by and between the **DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic, duly created and operated pursuant to Chapter 163, *Florida Statutes*, hereinafter referred to as "CRA" or "Agency", and **RABBIT HOLE DELRAY**, a Florida limited liability company, hereinafter referred to as "Grantee."

WITNESSETH:

WHEREAS, it is the policy of the CRA to stimulate and encourage economic growth within the CRA's Community Redevelopment Area ("Area"), pursuant to carrying out its purposes as provided for under Chapter 163, *Florida Statutes*; and

WHEREAS, the CRA has implemented the Project Consultancy and Design Services Program ("Program") in order catalyze commercial property improvement projects in high-priority areas in the CRA District, the program provides applicants with project consultancy and professional design services determined by a project's respective stage of development; and

WHEREAS, pursuant to the administration of the Program, the CRA wishes to foster new and retained business activity, and/or property activation by helping business and property owners determine the scope and feasibility of proposed improvement projects and by facilitating site plan approval and/or construction plans; and

WHEREAS, the CRA has determined that it serves a municipal and public purpose, and is in the public's best interest, pursuant to the CRA's Community Redevelopment Plan to award funding to the Grantee pursuant to the terms of this Agreement.

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

ARTICLE 1. DEFINITIONS.

1.01. Definitions. The terms defined in this Article shall have the following meanings, except as herein otherwise expressly provided:

(a) "Agency" means the Community Redevelopment Agency of the City of Delray Beach, as created by a Resolution of the City, adopted by the City Commission, including any amendments thereto, and any successors thereto.

(b) "City" means the City of Delray Beach, Florida, a Florida municipal corporation, and any successors thereto.

(c) "Grantee" means Rabbit Hole Delray, a Florida limited liability company, and any successors thereof, including any entity, partnership, joint venture, or other person in which

RABBIT HOLE DELRAY LLC, is a general partner or principal, but not including any entity, partnership, joint venture, or other person in which RABBIT HOLE DELRAY LLC, is a general partner or principal which is not undertaking or participating in any development of the Project, or any part thereof.

(d) "Plan" means the CRA's Community Redevelopment Plan for the Area, as approved by the City Commission, and any amendments to the Plan.

(e) "Project" means the professional design services to be obtained for the Property as contemplated by this Agreement, and as described in **Exhibit "A"**.

(f) "Property" and "Project Site" means the tract of land located in the Area in which the Project will be located, as more particularly described in **Exhibit "A"**.

ARTICLE 2. FINDINGS; INTENT.

2.01. Findings.

(a) The recitals set forth above in the "Whereas" clauses are hereby approved by the parties and incorporated herein.

(b) Grantee meets the eligibility requirements specified in the Program Guidelines, which are attached hereto as **Exhibit "B,"** and incorporated herein by reference.

(c) The Plan contemplates redevelopment in the Area for, among other things, commercial uses.

(d) Grantee intends to develop the Project on the Property.

(e) The Project is consistent with and furthers the provisions of the Plan and the Agency desires to encourage redevelopment of the Property and to encourage Grantee to locate the Project in the Area.

(f) The parties hereto recognize and acknowledge and do mutually find that the financial assistance provided pursuant to this Agreement is an important inducement to the Grantee undertaking the Project in the Area.

2.02. Intent; Cooperation.

(a) It is the intent of the parties hereto to efficiently, effectively and economically cause the successful development of the Project in order to improve the Property, specifically, and the conditions in the Area, in general, as well as implement the Plan and otherwise further the mission and purposes of the CRA.

(b) It is further the intent of the parties that the Grantee shall construct, equip, and otherwise complete the Project on the Property by the Termination Date substantially in

accordance with the approved Project for a commercial use.

(c) The parties mutually recognize and acknowledge that the CRA's obligation to make the payments is subject to the Grantee completing the development of the Project pursuant to the terms of this Agreement.

(d) The parties hereto recognize and acknowledge that the successful development of the Project is dependent upon continued cooperation of the parties hereto, and each agrees that it shall: (i) act in a reasonable manner hereunder, (ii) provide the other party with complete and updated information from time to time, (iii) make its good faith reasonable efforts to ensure that such cooperation is continuous, (iv) the purposes of this Agreement are carried out to the full extent contemplated hereby and (v) the Project is designed, constructed, equipped, completed and operated as provided herein.

ARTICLE 3. GRANTEE'S PERFORMANCE OBLIGATIONS

3.01 Grantee agrees that it will carry out the Project and activities as more specifically set forth in the **Proposed Design Services**, as provided in **Exhibit "A"**, which is attached hereto, and incorporated herein by reference. Grantee agrees that the redevelopment activities contemplated by this Agreement shall be completed in a timely manner.

3.02 Grantee hereby certifies that it has or will retain adequate staff to oversee execution of its performance obligations under this Agreement, and that execution of each of these performance obligations is consistent with Grantee's mission.

3.03. As a further condition to retaining any funds from the CRA, the Grantee shall provide to the CRA written verification, satisfactory to the CRA, in its sole discretion, compliance by Grantee with all agreed upon Performance Standards as set forth in this Agreement, and the Program Guidelines, which are attached hereto as **Exhibit "B,"** and incorporated herein by reference.

ARTICLE 4. PAYMENT PROCEDURES, CONDITIONS

4.01 Subject to the terms, conditions, and covenants contained within this Agreement and the Program Guidelines, the funds may be dispersed in two ways, (1) directly to contracted design professionals for eligible and pre-approved expenses only, pending the receipt of a detailed invoice and all anticipated deliverables as stated in **Exhibit "A"** and in compliance with this Article; or (2) as a reimbursement to the Grantee submitted to the CRA staff with proof of payment of detailed invoices and copies of deliverables from the design professional on record with the CRA and in compliance with this Article. Prior to receiving any funding or reimbursement, the Grantee shall submit the following:

- a. Detailed work invoice – from the vendor, corresponding to the completed approved reimbursable improvements.

- b. Proof of payment – in the form of a cancelled check, or credit card statement. Cash receipts are not satisfactory for purposes of reimbursement.
- c. CRA staff may request additional information to accompany reimbursement requests, including, but not limited to, photographs, verification of vendor certifications, building permits, occupational licenses, or other documentation.

4.02 CRA funding is at the approved award rate of 100% of eligible design costs, up to a maximum award amount of Four Thousand Eight Hundred and Forty Five and 00/100 Dollars (\$4,845.00). Pursuant to the Funding Program Guidelines, the authorized expenses eligible for reimbursement is an amount not to exceed Four Thousand Eight Hundred and Forty Five and 00/100 Dollars (\$4,845.00).

4.03 This Agreement shall be effective upon execution of this Agreement by both parties (“Effective Date”) and shall terminate ten (10) months from execution date of this Agreement (the “Termination Date”), unless sooner terminated as provided herein. The CRA shall be under no obligation to disburse any funds to the Grantee after the Termination Date, and Grantee shall not be entitled to receive any funds from the CRA after the Termination Date.

4.04 If the Grantee fails to comply with any of the provisions of this Agreement, the CRA may withhold, temporarily or permanently, all, or any, unpaid portion of the funds upon giving written notice to the Grantee, and/or terminate this Agreement and the CRA shall have no further funding obligation to the Grantee under this Agreement.

4.05 In the event the Grantee ceases to exist, or ceases or suspends its operation for any reason, any remaining unpaid portion of this Agreement shall be retained by the CRA and the CRA shall have no further funding obligation to Grantee with regard to those unpaid funds. The determination that the Grantee has ceased or suspended its operation shall be made solely by the CRA and Grantee, its successors in interest, agrees to be bound by the CRA's determination. Such determination shall be provided to the Grantee by the CRA in writing.

ARTICLE 5. MAXIMUM GRANT AMOUNT

5.01 In no event shall the reimbursements made to Grantee pursuant to this Agreement exceed the maximum total funding of Four Thousand Eight Hundred and Forty Five and 00/100 Dollars (\$4,845.00).

ARTICLE 6. PERFORMANCE

6.01 The parties expressly agree that time is of the essence with regard to performance as set forth in this Agreement and failure by Grantee to complete performance within a reasonable time as determined by the CRA, shall, at the option of the CRA without liability, in addition to any of the CRA's rights or remedies, relieve the CRA of any obligation under this Agreement.

ARTICLE 7. INDEMNIFICATION

7.01. Indemnification by the Grantee.

(a) For good and valuable consideration herein provided, the receipt of which is hereby acknowledged by the Grantee, the Grantee agrees to indemnify, defend and hold harmless, the Agency, its respective agents, officers, or employees from any and all liabilities, damages, penalties, judgments, claims, demands, costs, losses, expenses or attorneys' fees through appellate proceedings, for personal injury, bodily injury, death or property damage arising out of, or by reason of any act or omission of the Grantee, its agents, employees or contractors arising out of, in connection with or by reason of, the performance of any and all services contemplated by this Agreement, or which are alleged to have arisen out of, in connection with or by reason of, the performance of any and all services contemplated by this Agreement, or which are alleged to have arisen out of, in connection with, or by reason of, the performance of such services. The indemnification shall survive the Agreement's termination.

ARTICLE 8. DEFAULT; TERMINATION.

8.01. Default by Grantee. In the event the Grantee fails to perform or comply with any material provision of this Agreement, the Grantee shall be in default. If an event of default by the Grantee shall occur, the Agency shall provide written notice to the Grantee. If the default shall not be cured by the Grantee within fourteen (14) days after receipt of the written notice from the Agency, or if such event of default is of such nature that it cannot be completely cured within such time period, the Agency may terminate this Agreement.

8.02. Notwithstanding anything to the contrary herein, upon an occurrence and continuance of an Event of Default by Grantee that is not cured within the applicable cure or grace period, Agency's sole remedy under this Agreement shall be to terminate the Agreement. Upon such termination, Agency's obligations to Grantee under this Agreement shall cease, including without limitation its obligation to make any payments to Grantee. In the event of such termination, Grantee's obligations under this Agreement shall cease, excepting only the indemnification as set forth in this Agreement.

8.03. Termination.

(a) The Grantee and the Agency acknowledge and agree that as of the Effective Date certain matters mutually agreed by the parties hereto are essential to the successful development of the Project may have not been satisfied or are subject to certain conditions, legal requirements or approvals beyond the control of any of the parties hereto or which cannot be definitely resolved under this Agreement. In recognition of these events or conditions, the parties hereto mutually agree that, provided the appropriate or responsible party therefor diligently and in good faith seeks to the fullest extent of its capabilities to cause such event or condition to occur or be satisfied, the failure of the events or conditions listed in subsection (b) below to occur or be satisfied shall not constitute an event of default by any party under this Article, but may be the basis for a termination of this Agreement.

(b) In addition to any other rights of termination provided elsewhere in this Agreement, this Agreement may be terminated as provided in subsection (c) in the event the appropriate Governmental Authority, upon petition by the Grantee, unduly delays or denies or fails to issue building permits, or approve any other governmental approvals or permits necessary to commence construction of the Project.

(c) Upon the occurrence of an event described in subsection (b), then the Grantee or the Agency may, upon determining that such event cannot reasonably be expected to change in the foreseeable future so as to allow development of the Project, elect to terminate this Agreement by giving a notice to the other party hereto within thirty (30) days of the occurrence of such event or the determination of inability to cause a condition precedent to occur or be satisfied, stating its election to terminate this Agreement as a result thereof, in which case this Agreement shall then terminate.

(d) In the event of a termination pursuant to subsection (c), neither the Grantee nor the Agency shall be obligated or liable one to the other in any way, financially or otherwise, for any claim or matter arising from or as a result of this Agreement or any actions taken by the Grantee and the Agency, or any of them, hereunder or contemplated hereby, and each party shall be responsible for its own costs.

(e) Notwithstanding anything to the contrary contained herein, in the event that any party shall have, but shall not exercise, the right hereunder to terminate this Agreement because of the non-satisfaction of any condition specified herein, and such condition is subsequently satisfied, then the non-satisfaction of such condition shall no longer be the basis for termination of this Agreement.

ARTICLE 9. AVAILABILITY OF FUNDS

9.01. The CRA's obligation to pay Grantee any funds pursuant to this Agreement is contingent upon having received tax increment funds pursuant to Chapter 163, Part III, Florida Statutes, and that the funds for the Consultancy and Design Services Program have been budgeted and appropriated by the CRA's Board of Commissioners.

ARTICLE 10. REMEDIES

10.01. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ARTICLE 11. CIVIL RIGHTS COMPLIANCE

11.01. The Grantee warrants and represents that all of its employees are treated equally

during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

ARTICLE 12. FEES, COSTS

12.01. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled, provided, however, that this clause pertains only to the parties to this Agreement.

ARTICLE 13. MISCELLANEOUS

13.01. Public Purpose. The parties acknowledge and agree that this Agreement satisfies, fulfills and is pursuant to and for a public purpose and municipal purpose and is in the public interest, and is a proper exercise of the Agency's power and authority under the Chapter 163, Part III, Florida Statutes.

13.02. No General Obligation. In no event shall any obligation of the Agency under this Agreement be or constitute a general obligation or indebtedness of the City or the Agency, a pledge of the ad valorem taxing power of the City or the Agency or a general obligation or indebtedness of the City or the Agency within the meaning of the Constitution of the State of Florida or any other applicable laws, but shall be payable solely from legally available revenues and funds. Neither the Grantee nor any other party under or beneficiary of this Agreement shall ever have the right to compel the exercise of the ad valorem taxing power of the City, the Agency or any other governmental entity or taxation in any form on any real or personal property to pay the City's or the Agency's obligations or undertakings hereunder.

13.03. Assignments. This Agreement is not assignable.

13.04. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

13.05. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors.

13.06. Notices.

(a) All notices, demands, requests for approvals or other communications given by

either party to another shall be in writing, and shall be sent by registered or certified mail, postage prepaid, return receipt requested or by overnight courier service, or by hand delivery to the office for each party indicated below and addressed as follows:

For Agency: Renée A. Jadusingh, Esq., Executive Director
Delray Beach Community Redevelopment Agency
20 N. Swinton Avenue
Delray Beach, FL 33444
Telephone: (561) 276-8640
Facsimile: (561) 276-8558
Email copy to: Ashlyn Darden, Esq., Legal Advisor
DardenA@mydelraybeach.com

For Grantee: Dee Woods
Rabbit Hole Delray LLC
2659 E. Atlantic Blvd
Pompano Beach, FL 33062
Telephone No.: 561-428-5717

(b) Notices given by courier service or by hand delivery shall be effective upon delivery and notices given by mail shall be effective on the third (3rd) business day after mailing. Refusal by any person to accept delivery of any notice delivered to the office at the address indicated above (or as it may be changed) shall be deemed to have been an effective delivery as provided in this Section. The addresses to which notices are to be sent may be changed from time to time by written notice delivered to the other parties and such notices shall be effective upon receipt. Until notice of change of address is received as to any particular party hereto, all other parties may rely upon the last address given.

13.07 Public Records. Grantee shall comply with the applicable provisions of Chapter 119, Florida Statutes. Specifically, Grantee shall:

- (a) Keep and maintain public records required by the CRA in association with the Funding Award.
- (b) Upon request from the CRA's custodian of public records, provide the CRA 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 this chapter or as otherwise provided by law.
- (c) 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 Agreement and following completion of the Agreement if the Grantee does not transfer the records to the CRA.
- (d) Upon completion of the Agreement, transfer, at no cost, to the public agency all public

records in possession of the Grantee or keep and maintain public records required by the public agency to perform the service. If the Grantee transfers all public records to the CRA upon completion of the Agreement, the Grantee shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Grantee keeps and maintains public records upon completion of the Agreement, the Grantee shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the CRA's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF THE GRANTEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE GRANTEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT

**ASHLYN K. DARDEN, ESQ.
561-276-8640
DARDENA@MYDELRAYBEACH.COM
20 NORTH SWINTON AVENUE
DELRAY BEACH, FLORIDA 33444**

The failure of Grantee to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement.

13.08. Captions. The article and section headings and captions of this Agreement are for convenience and reference only and in no way define, limit, describe the scope or intent of this Agreement or any part thereof, or in any way affect this Agreement or construe any article, section, subsection, paragraph or provision hereof.

13.09. Entire Agreement. The CRA and the Grantee agree that this Agreement sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto. The CRA's Executive Director may further approve and amend this Agreement by executing a written agreement signed by both parties.

WITNESS WHEREOF, the parties hereto have set their hands and their respective seals affixed as of the date and year set forth above.

ATTEST:

DELRAY BEACH COMMUNITY
REDEVELOPMENT AGENCY

Renée A. Jadusingh, Esq.
CRA Executive Director

By: _____
Tom Carney, Chair

APPROVED AS TO FORM:

CRA Legal Advisor

ATTEST:

Rabbit Hole Delray, a Florida
limited liability corporation

Print Name: _____

By: _____
Print Name: _____

(SEAL)

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____ (person), _____ (title) Rabbit Hole Delray, a Florida limited liability corporation, on behalf of the limited liability corporation. She/He is personally known to me or has produced _____ (type of identification) as identification

Notary Public – State of Florida

EXHIBIT “A”

PROPOSED DESIGN SERVICES

1. PROJECT DESCRIPTION:

Name of Company/Grantee:

Rabbit Hole Delray LLC

Description of Site Improvements:

Funding assistance is requested for the cost of design services with an architectural firm for conceptual design and plans for improvements at 95 NW 5th Avenue.

Location:

95 NW 5th Avenue, Suite Delray Beach, FL 33444

Description of Eligible Expenditures:

- i. Schematic Design
- ii. Design Development - basic services for architectural / structural / mechanical-electrical-plumbing including security and IT. Additional services for civil, surveying will be determined by project scope of services.
- iii. Working Drawings (for final revisions)
- iv. Construction Documents (for Permits) – signed and sealed by a registered architect or other applicable professional

CRA Funding Amount:

An amount not to exceed \$4845.00

Grantee Contact:

Dee Woods
Rabbit Hole Delray, LLC
2659 E. Atlantic Blvd
Pompano Beach, FL 33062
Telephone No.: 561-428-5717

EXHIBIT “B”
PROGRAM GUIDELINES