

STANDARD ADDENDUM TO AGREEMENT

This standard contract addendum is executed by and between the **City Of Mt. Juliet, Tennessee**, a municipal corporation in the State of Tennessee, (herein further referenced and identified as the "City" or "Customer") and **Kimley-Horn and Associates, Inc.**, (herein further referenced and identified as "Vendor") in order to amend the terms of the "Professional Services Agreement – Mt. Juliet Parks and Recreation Master Plan Update" (hereinafter referred to as "Agreement"), including all attachments, exhibits, or any actual or virtual documents or writing, including, but not limited to, all any "clickwrap," "clickthrough" or "click and accept" agreement or other Terms of Service.

WITNESSETH

WHEREAS, the parties wish to execute this addendum to the Agreement for the purposes of substituting, clarifying or inserting certain terms of or into their Agreement; and

WHEREAS, the terms of this addendum to the Agreement shall take precedence over all other terms, conditions or language to the contrary or in conflict with the language contained in the Agreement; however, any term or clause not modified by the provisions herein shall be governed by the Agreement. The parties agree that this addendum shall not be construed to create any ambiguity, it being the expressed intent of the parties that this addendum shall control;

THEREFORE, in consideration of using Vendor's Agreement, the mutual promises set out herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by Vendor the parties hereto agree to the following:

1. **VENUE**. The parties agree that venue for any legal or other dispute arising under the terms of the Agreement or this addendum to agreement shall lie exclusively in the courts of Wilson County, Tennessee or the United States District Court, for the Middle District of Tennessee. The parties hereby waive their right to a jury trial;

2. **CHOICE OF LAW**. The Agreement shall be deemed to be entered into under Tennessee law, and the rights and obligation of the parties are governed by the laws of the State of Tennessee, without regard to its conflict of laws principles, and all obligations of the parties are performable in Mt. Juliet, Tennessee.

3. **INDEMNIFICATION**. The parties hereto agree that Vendor shall indemnify the City for any and all claims of negligence, tortious conduct or otherwise unlawful acts committed by Vendor in the performance of their obligations under the terms of the original agreement or this addendum to agreement and Vendor agrees to pay any and all costs associated with the enforcement of the terms of this indemnity agreement by the

City, including but not limited to, court costs, civil judgments, assessments or any other reasonable fees associated therewith. In addition, Article II, Section 29 of the Tennessee Constitution prohibits municipalities from lending their credit to private or public entities and, therefore, prohibits an agreement by the City to indemnify a third party or agree to a limitation of liability provision. Any indemnity or hold harmless provision contained in the Agreement requiring the City to indemnify or hold harmless Vendor or any other person or entity or any limitation of liability in favor of Vendor shall be deemed null, void and unenforceable against the City under any and all circumstances.

4. NON-APPROPRIATION. Vendor acknowledges that the City is a governmental entity, and the validity of the Agreement is based upon the availability of public funding under its authority. In the event the City fails to appropriate funds or make monies available for any fiscal year covered by the term of the Agreement for services to be provided, the Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without liability to the City, and such termination shall not be a breach of the Agreement, and any unused payment made to Vendor shall be returned to the City.

5. TAX EXEMPTION. As a tax-exempt entity, the City shall not be responsible for sales or use taxes incurred for products or services. The City shall supply Vendor with its Sales and Use Tax Exemption Certificate upon Vendor's request. Vendor shall bear the burden of providing its suppliers with a copy of the City's tax exemption certificate and Vendor shall assume all liability for such taxes, if any, that should be incurred.

6. NO ATTORNEY'S FEES. The parties hereto agree that The City shall be in no event liable for any attorney's fees which Vendor may incur due to breach of the original agreement or this addendum agreement by either party; and further, The City shall not acquiesce to any term of the original contract/agreement that indicates or infers The City may or shall be responsible for the fees of another party or the Vendor's attorney fees.

7. MEDIATION; NO ARBITRATION. The City may, at its option, require the attempted resolution of any dispute arising under the original contract or this addendum to agreement by mediation prior to the filing of any lawsuit or other claim. Should any dispute arise, Vendor shall provide the City notice of any intent to file suit by certified mail. The City shall notify the Vendor of its intent to exercise its right to mediation within thirty (30) days of receiving such notice. If the City does not exercise its right to mediation, Vendor may file suit. Any mediator selected under this clause shall be agreed upon by the parties and the costs of such mediation shall be divided and paid equally between the parties. The parties hereby further agree that,

except as provided for in this addendum or by applicable law, the parties shall not be required to participate in any alternative dispute resolution process or procedure, including but not limited to arbitration and med-arb, relating to disputes that arise between the parties to the Agreement.

8. FAILURE TO PERFORM. The parties agree, in the event Vendor fails to perform any obligation, other than with regards to the date of delivery, set out in the Agreement/Contract, the City shall be reimbursed by Vendor for any and all expenses associated with having to obtain a new provider to finish out the contracted term, including, but in no way limited to, any charges/fees, which are above and beyond the amount the City would have paid to Vendor to complete the same task; provided, however, that if the failure, by its nature, is one that can be cured, the Vendor shall have fifteen (15) business days after receipt of written notice from the City to cure said failure to perform. The parties hereby agree, unless a specific date of delivery is provided in the Agreement/Contract all deliveries shall be made to the City no later than ninety (90) days from the date of the Agreement/Contract. The parties further agree that if Vendor, in good faith, is not able to meet this ninety (90) day deadline of delivery due to forces beyond his, her or its control, that were unforeseeable at the time of signing the Agreement/Contract, then the entire Agreement/Contract shall be voidable at the sole discretion of the City. Should the City elect to void the Agreement/Contract due to Vendor's good faith inability, due to forces beyond his, her or its control, and which were unforeseeable at the time of signing the Agreement/Contract to meet the delivery deadline, then neither party shall be deemed to have breached the Agreement/Contract, and Vendor shall return all monies, within seven (7) business days, paid by the City for the products/items that could not be delivered in the allotted time. This provision shall take propriety over any Force Majeure Clause contained within the Agreement/Contract.

9. USE OF CITY'S LOGO OR NAME. Vendor shall not use the City's name or any logo in marketing or publicity materials or for marketing or publicity purposes without the prior written authorization from the City. Vendor shall not issue, publish, or divulge any materials developed or used in the performance of this Agreement or make any statement to the media relating to this Agreement without the prior written consent of the City.

10. WARRANTY. Vendor warrants that the product(s) herein, when used in accordance with the documentation, shall operate and conform in all material respects in conformity with this Agreement and the written representations of Vendor, including applicable user manuals and guides supplied by Vendor or with Vendor's Software. If it does not perform as warranted, Vendor shall use all commercially reasonable efforts to correct the product(s) so that it operates in all material respects in conformity with the written

representations of Vendor. If Vendor cannot correct the product(s) within a reasonable period of time, Vendor shall refund the purchase price of the product(s).

11. SOFTWARE DEADLINE, TESTING AND ACCEPTANCE. If applicable to the Agreement, software provided by Vendor shall be installed for the purposes of testing, as stated herein below, no later than one hundred twenty (120) days from the effective date of the Agreement and this Addendum thereto, unless the Agreement states a specific date which is before or after said deadline. In Addition, software provided by Vendor to the City is subject to inspection and testing to verify that the software conforms to its written specifications and to ensure it meets the City's needs. The City shall have seven (7) business days after the software is installed to perform testing of the software using the City's data. The City shall provide Vendor with written notice of acceptance or rejection of the software five (5) business days or less after the end of the testing period. If the City does not provide timely written notice of acceptance or rejection to Vendor, the software shall be deemed to be accepted by the City. If the software is rejected, the City may, at its sole discretion, either (1) return the software and receive a refund of all fees paid with respect thereto, or (2) allow Vendor to repair or replace the software, without charge, in a timely manner. In the event the City elects to allow the Vendor to repair or replace the software, the City shall have an additional (7) business days in which to accept or reject the software as laid out hereinabove.

12. NO AUTOMATIC RENEWAL. The term of the Agreement shall not be renewed or extended beyond the initial term and any provision providing for automatic or continuing renewal of the Agreement is not applicable.

13. UNILATERAL MODIFICATION OF AGREEMENT NOT PERMITTED. Vendor may make unilateral changes to its Privacy Policy, provided any such changes are subject to the provisions of this Addendum, shall not alter this Addendum, and shall not materially alter the use of the service or reduce the level of protection provided to the City at the time of the execution of this Agreement. Except as provided in the preceding sentence, notwithstanding anything in the Agreement to the contrary, any change to the Agreement made by Vendor that is not in writing and that is not properly executed by the signatures of authorized representatives of the parties hereto, including attestation by the City's Clerk and approved as to form by the City Attorney are subject to the terms and conditions of this Addendum, and shall not alter this Addendum and shall not materially alter the use of the service or reduce the level of protection provided to the City at the time of the execution of this Agreement.

14. CHANGES TO TERMS. Except as provided in Paragraph No. 13 above pertaining to Vendor's Privacy Policy, Vendor shall provide the City written notice, sent in care of City Attorney's Office, 2425 N.

Mt. Juliet Road, Mt. Juliet, Tennessee 37122, of any proposed change to the Agreement at least ninety (90) days prior to being effective to the City. The City shall have thirty (30) days after receiving the written notice to terminate this Agreement, and such cancellation shall not be a breach of this Agreement. Vendor will refund to the City any payment made by the City to Vendor equal to the difference between the number of months the payment was intended for and the number of months remaining on Agreement that the fee was intended to cover.

15. PRICE ASSURANCE. Unless specifically stated in the Agreement, the price shall be valid for the full term of the Agreement. If Vendor, specifically states, in the Agreement that he, she or it cannot honor the price for the full term of the Agreement; the Agreement is voidable at the sole discretion of the City, if at any time during the full term of the Agreement, Vendor requests to raise the contract price. If the City elects to void the Agreement, at its sole discretion, it shall not be deemed to be a breach of the contract by either party.

16. CONFIDENTIALITY. The City, as a Tennessee Municipal Corporation is subject to the Tennessee Open Records Act, set out in T.C.A. §10-7-503 et seq; therefore, this Addendum, the Agreement and all documents or materials, in any format, including, but not limited to paper, electronic or virtual, that are public records pursuant to law, are not confidential and are subject to disclosure, without regard to any provision contained in the Agreement declaring information confidential. The City will respond to all proper Open Records Requests in the time allowed by law, without any requirement to disclose such request to Vendor or provide Vendor with notice or the time to obtain a protective order. The City does not have the burden of establishing that information is not confidential information or that its release is authorized to release the records. This section 16 serves to meet such burden and authorization of disclosure.

17. NO PRESUMPTION AGAINST DRAFTER. The parties are both business entities having substantial experience with the subject matter of this addendum, and each has fully participated in the negotiation and drafting of this addendum. Accordingly, this addendum shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed addendum differs in any respect from any previous draft hereof.

18. SURVIVAL. This entire addendum shall survive the completion of or any termination of the Agreement or other document which may accompany the Agreement or be incorporated by reference and shall remain in full force and effect until the expiration of any applicable statute of limitation.

19. **EFFECTIVE DATE.** This addendum shall be deemed to have the same effective date of the Agreement.

IN WITNESS WHEREOF, the parties hereto warrant and represent that the individual who has signed this addendum on behalf of such party is duly authorized by all necessary and appropriate corporate action to sign this addendum.

VENDOR

BY: _____

PRINTED NAME: _____

VENDOR: Kimley-Horn and Associates, Inc. _____

TITLE: _____

DATE: _____

CUSTOMER

BY: _____

PRINTED NAME: _____

CUSTOMER: City of Mt. Juliet _____

TITLE: _____

DATE: _____

