

RESOLUTION NO. 4 , 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO
A CONTRACT WITH HUMAN NATURE, INC. FOR PROFESSIONAL DESIGN AND
ENGINEERING SERVICES RELATED TO THE RONALD REAGAN CROSS COUNTY
HIGHWAY/MONTGOMERY ROAD INTERCHANGE LANDSCAPING PROJECT**

WHEREAS, Section 9.03 of Article IX of the Charter of the City of Montgomery, Ohio, provides the method under which the City Manager shall make certain purchases and enter into contracts on behalf of the City; and

WHEREAS, it is appropriate to provide contract authority for professional services that are generally not subject to competitive bidding but will exceed a total of \$50,000 in a calendar year; and

WHEREAS, it is the desire of the Council of the City of Montgomery to enter into a contract with Human Nature, Inc. to perform landscape design and engineering services for the City for the Ronald Reagan Cross County Highway/Montgomery Road Interchange Landscaping Project.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. The City Manager is hereby authorized to enter into a contract with Human Nature, Inc. for professional services to be provided to the City for the Ronald Reagan Cross County Highway/Montgomery Road Interchange Landscaping Project according to the Agreement submitted by Human Nature, Inc., attached hereto as Exhibit "A" and incorporated herein by reference, with a base fee of \$64,000.

SECTION 2. The City Manager is hereby authorized to pay Human Nature, Inc. according to the Agreement, up to a total of \$69,500 which includes contingencies and incidentals.

SECTION 3. This Resolution shall be in full force and effect from and after

its passage.

PASSED: January 5, 2022

ATTEST: Connie Gaylor
Connie Gaylor, Clerk of Council

Craig D. Margolis
Craig D. Margolis, Mayor

APPROVED AS TO FORM:

Terrence M. Donnellon
Terrence M. Donnellon, Law Director



AGREEMENT BETWEEN CLIENT AND LANDSCAPE ARCHITECT

This Agreement, effective as of December 10, 2021 is between **City of Montgomery, Ohio** (Owner) and Human Nature Inc., 990 St. Paul Drive, Cincinnati, Ohio (Consultant) for the following Project: **Ronald Reagan Highway and Montgomery Road Roundabout Landscape Design**, at the traffic roundabout at Ronald Reagan and Montgomery Road in Montgomery, Ohio.

Article 1 Landscape Architect's Basic and Additional Services

Landscape Architect's Basic Services are:

Task 1.0: Project Startup and Administration

1.1 Project Administration/Team Coordination

Consultant will coordinate with the Owner throughout the Schematic Design including update communications, regular workflow communications, data requests and other requests needed of and/or from the Owner. Consultant will manage Design Team members as follows:

- M+A Architects - architecture, tower design, structural components
- Strand Associates - traffic engineer advisory/design input
- JS Held - cost estimator

Design Team will participate in up to (3) meetings with the Owner, and one (1) public meeting described in 1.3. Meetings are estimated to be one per month for 2-3 month phase duration. Due to the unpredictable nature of Covid-19 restrictions, meetings may have to be held remotely via Zoom or other preferred video conferencing system.

1.2 Digital Base and Site Observations

Consultant will build a digital base plan in AutoCAD based on existing data from the roundabout project, previous site topographic survey and the latest Owner-provided development plans for the adjacent development. Consultant will perform a site visit and document observations that may impact the concept.

1.3 Public Engagement

Consultant will attend and facilitate one public meeting in an open-house format. This meeting will occur after an initial concept has been approved by the City and will allow the public to provide input on different alternatives in materials and details of the approved concept, prior to the Design Team develop Schematic Design drawings and costs. Owner will manage meeting date/time, locations and public notice for the public meeting. Consultant will prepare graphics to share with the public. Rendered views of the 3d model as well as plan view of the gateway will be used in the public meetings. Consultant will record and summarize the input received at the public meeting and share with the Owner and work

with the Owner to decide what input and direction will be incorporated into the final design. While the preference and intention is to have this public meeting in-person, due to the unpredictable nature of Covid-19 and related restrictions, the public meeting may be held remotely via Zoom or other preferred video conferencing system with electronic input/survey.

Task 2.0 Concept Confirmation

2.1 Design

During the project selection and award process, Consultant developed a concept design for the project that was generally approved by City Council/Selection Committee. Additional feedback was provided by the City during the project kick-off meeting. The Design Team will take that feedback and study revised concepts for the roundabout and present 2-3 new alternatives to the City Council for discussion, input and selection of a preferred concept or elements of each concept. Consultant will identify and research applicable planning and zoning ordinances as they impact design concept of tower. The Design Team will consolidate the comments and make revisions into a final design concept for the roundabout. From there, the Design Team will explore material options and alternatives. This is preparation for the public input session to provide the public with options of specific focus.

We will develop concepts in plan and 3D models to convey the design intent of the concepts and alternatives. The plans and models will be concept-level to help determine the desired design components and will have realistic image of materials and plants.

Task 3.0 Schematic/30% Design

3.1 30% Design

With the direction and input from the City and public on the conceptual plans delivered in Task 2.0, Consultant will develop 30% Design documents. These documents are to provide the next step in design detail from conceptual design with more accurate dimensions, materials and layout to help inform a cost estimate. Consultant will continue to update the 3d model with final revisions from Task 2.0 and use views from the 3d model in the 30% design documents.

Drawings expected at 30% Design include:

- Hardscape Materials Plan and Schedule (pedestrian materials only, vehicular/roadway pavements will not be impacted by this project)
- Site Furnishings Plan and Schedule
- Planting Plan and Schedule
- Building Plan, sections and elevations
- Structural narrative to help inform 30% costs

3.2 Cost Estimate

Based on the 30% design drawings, the Design Team will develop a cost estimate reflecting the information of design and material known at the time. Any opinions of probable cost prepared by the Design Team are for the City's general guidance only for funding and phasing

consideration. The Design Team has no control over competitive bidding or market conditions and cannot guarantee the accuracy of cost estimate as compared to contract bids or actual costs.

Exclusions:

The tasks and services listed below are specifically excluded from this scope of work and include but may not be limited to the following. If a task is not listed above then it is agreed upon as not being included in this agreement.

- Surveying
- Geotechnical borings, investigations
- Environmental assessments
- Traffic analysis/ engineering
- Utility analysis/engineering
- Zoning
- Permitting
- Design Phases beyond Schematic/30% Design including 60% Design/Design Development & Construction Documents
- Bidding/ Construction administration

Article 2 Client's Responsibilities

- A. Client agrees to provide Landscape Architect with all information, digital base data, surveys, reports, and professional recommendations and any other related items requested by Landscape Architect in order to provide its professional services. Landscape Architect may rely on the accuracy and completeness of these items.
- B. Client agrees to advise Landscape Architect of any known or suspected contaminants at the Project site. Client shall be solely responsible for all subsurface soil conditions and will indemnify and hold Landscape Architect harmless as to same.
- C. Client will obtain and pay for all necessary permits from authorities with jurisdiction over the Project.
- D. Client agrees to provide the items described in Article 2.A and to render decisions in a timely manner so as not to delay the orderly and sequential progress of Landscape Architect's services.

Article 3 Estimated Schedule and Project Budget

- A. Landscape Architect shall render its services as expeditiously as is consistent with professional skill and care. During the course of the Project, anticipated and unanticipated events may impact any Project schedule.
- B. At the project kick-off meeting, Client notified the Consultant the project budget for 2022 is \$400,000 prior to selecting a concept from the selection process. It is understood by the Client that the selected concept has elements that are acknowledged to be above the

original budget.

C. Schedule:

- Conceptual Design: December 2021-February 2022
- Public Meeting: late February 2022
- Schematic Design: February 2022-April 2022

D. Client agrees to promptly notify Landscape Architect if Client's schedule or budget changes. Client acknowledges that significant changes to the Project or construction schedule or budget, or to the Project's scope may require Additional Services of Landscape Architect. Because there is not a known construction cost at this time, the design process will assist the City in determining budget needs for the project.

E.

Article 4 Compensation and Payments

A. Client agrees to pay Landscape Architect as follows:

1. Basic Services: \$64,000 lump sum.
2. Additional Services: hourly upon prior approval.

B. Expenses are excluded from the fee above, including but not limited to: reproduction, postage, and handling of documents, large format boards for public meeting if required and will be billed at cost. Mileage will be billed at current standard federal rate.

C. Landscape Architect shall bill Client once a month. All payments are due Landscape Architect upon receipt of invoice. An amount equal to three percent (3%) of any outstanding balance due per month will be charged on all amounts due more than 30 days after the date of invoice.

Article 5 Termination

A. Either Client or Landscape Architect may terminate this Agreement upon seven days written notice.

B. If terminated, Client agrees to pay Landscape Architect for all Basic and Additional Services rendered and Reimbursable Expenses incurred or accrued up to the date of termination.

C. Upon not less than seven days' written notice, Landscape Architect may suspend the performance of its services if Client fails to pay Landscape Architect in full for services rendered or expenses incurred. Landscape Architect shall have no liability because of such suspension of services or termination due to Client's nonpayment.

Article 6 Dispute Resolution

- A. Client and Landscape Architect agree to mediate claims or disputes arising out of or relating to this Agreement before initiating litigation. The mediation shall be conducted by a mediation service acceptable to the parties. A party shall make a demand for mediation within a reasonable time after a claim or dispute arises, and the parties agree to mediate in good faith. In no event shall any demand for mediation be made after such claim or dispute would be barred by applicable law. Mediation fees shall be shared equally.

Article 7 Use and Ownership of Landscape Architect's Documents

- A. Upon the parties signing this Agreement, Landscape Architect grants Client a nonexclusive license to use Landscape Architect's documents as described in this Agreement, provided Client performs in accordance with the terms of this Agreement. No other license is implied or granted under this Agreement. All instruments of professional service prepared by Landscape Architect, including but not limited to, drawings and specifications, are the property of Owner. Landscape Architect may use drawings or instruments from this work.

Article 8 Miscellaneous Provisions.

- A. This Agreement is governed by the law of State of Ohio.
- B. This Agreement is the entire and integrated agreement between Client and Landscape Architect and supersedes all prior negotiations, statements or agreements, either written or oral. The parties may amend this Agreement only by a written instrument signed by both Client and Landscape Architect.
- C. In the event that any term or provision of this Agreement is found to be unenforceable or invalid for any reason, the remainder of this Agreement shall continue in full force and effect, and the parties agree that any unenforceable or invalid term or provision shall be amended to the minimum extent required to make such term or provision enforceable and valid.
- D. Neither Client nor Landscape Architect shall assign this Agreement without the written consent of the other.
- E. Irrespective of any other term in this Agreement, Landscape Architect shall not control or be responsible for construction means, methods, techniques, schedules, sequences or procedures; or for construction safety or any other related programs; or for another parties' errors or omissions or for another parties' failure to complete their work or services in accordance with Landscape Architect's documents.

- F. Should any legal proceeding be commenced between the parties to this Agreement seeking to enforce any of its provisions, including, but not limited to, fee provisions, the prevailing party in such proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorneys' and expert witnesses' fees, which shall be determined by the court or forum in such a proceeding or in a separate action brought for that purpose.

For purposes of this provision, "prevailing party" shall include a party that dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.

- G. Client and Landscape Architect waive consequential damages for any claims, disputes or other matters in question arising out of or relating to this Agreement. Landscape Architect's waiver of consequential damages, however, is contingent upon the Client requiring any and all contractor and its/their subcontractors to waive all consequential damages against Landscape Architect for claims, disputes or other matters in question arising out of or relating to the Project.
- H. To the extent damages are covered by property insurance during construction, Client and Landscape Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for such damages. Client or Landscape Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties described in this paragraph.
- I. No waiver by either party of any default or breach of any covenant set forth hereunder shall be inferred from any omission by said party to take action on account of such default, and no express waiver shall affect any default other than the default specified in the waiver and then said waiver shall be operative only to the time and to the extent therein stated.
- J. Client acknowledges and agrees that proper Project maintenance is required after the Project is complete. Client further acknowledges and agrees that, as between the parties to this Agreement, Client is solely responsible for the results of any lack of or improper maintenance.
- K. Nothing in this Agreement shall create a contractual relationship for the benefit of any third party.
- L. If this Agreement is not signed and returned to Landscape Architect within 30 days, the offer to perform the described services may, in Landscape Architect's sole discretion, be withdrawn and be null and void.
- M. Risk Allocation:

Client understands and acknowledges that the design and construction process for this Project poses certain risks to both Landscape Architect and Client. Client further understands and acknowledges that the amount of risk that Landscape Architect can accept is tied, in part, to the amount of compensation received for services rendered. Landscape Architect's fee for the services offered is based on Client's agreement to limit Landscape Architect's liability as described below. Client further acknowledges that were it not for this agreement to limit Landscape Architect's liability, Landscape Architect's compensation would need to increase to address the risks posed by this Project.

Client, therefore, acknowledging its right to discuss this provision with legal counsel experienced in the design and construction process, as well as other design professionals, voluntarily agrees that, to the fullest extent permitted by law, Landscape Architect's total liability to Client for any and all injuries, claims, liabilities, losses, costs, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any cause or causes including, but not limited to, Landscape Architect's negligence, errors, (whether willful or otherwise), omissions (whether willful or otherwise), or breach of contract, shall not exceed two times of the total compensation actually received by Landscape Architect under this Agreement. This limitation of liability shall apply to Client's direct claims and Client's claims arising from third parties.

LANDSCAPE ARCHITECT:

CLIENT:

HUMAN NATURE, INC., an Ohio corporation

City of Montgomery

By:

Gary R. Wolnitzek

President

Date:

By:

Printed Name: Brian Riblet

Its: City Manager

Date: