

CONTRACT FOR BROKERAGE SERVICES
BETWEEN CITY OF PENSACOLA AND
KUHN REALTY, LLC

THIS CONTRACT ("Contract") is made this 15th day of MARCH, 2021, to be effective as of December 16, 2020 (the "Effective Date"), by and between the **City of Pensacola** ("City"), a Florida municipal corporation created and existing under the laws of the State of Florida, and **Kuhn Realty, LLC** ("Broker"), a limited liability company authorized to do business in Florida, located at 1216 North Palafox St., Pensacola, Florida 32501 (the City and Consultant are collectively referred to hereinafter as the "Parties").

WITNESSETH:

WHEREAS, City is the owner of those certain vacant parcels of land more particularly described on the attached Exhibit "A" (the "Lots" described in the description on Exhibit "A" are referred to hereinafter individually as a "Parcel", and collectively as the "Parcels" or the "Property");

WHEREAS, the City and Studer Properties, LLP, a Florida limited liability partnership ("Studer"), entered into that certain Option Agreement dated April 1, 2018, as amended by Addendum to Option Agreement dated April 1, 2020 (the "Option Agreement");

WHEREAS, Studer has assigned a portion of its rights in the Option Agreement (hereinafter the "Partial Assignment") to Silver Hills Development, Inc., their successors and/or assigns (hereinafter referred to as "Developer");

WHEREAS, City desires to engage a professional agent to assist and advise it in the development of the Parcels at the Community Maritime Park (the "Project"), including without limitation negotiations with the Developer for ground leases(s), development agreements, and/or other agreements, and other services that the Parties may mutually agree upon;

WHEREAS, the City has evidenced the will of the citizens to retain ownership of all parcels at the Community Maritime Park through the adoption of section 2-3-4, Code of City of Pensacola, and Ordinance #25-20;

WHEREAS, Broker has the skills, experience, and knowledge to assist the City in the Project and submitted to the City a statement of work, insurance requirements, and other information related to the consulting services requested (all such documentation hereinafter referred to as the "Proposal"), attached hereto as Exhibit B and incorporated herein by this reference; and

WHEREAS, the Parties desire to enter into this Contract.

NOW, THEREFORE, in consideration of the work to be performed and the payment for the performance of the work, and of the mutual covenants contained herein and the mutual benefits to flow each unto the other, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

Section 1. Recitals. The recitals contained above are declared by the Parties to be true and correct and are incorporated into this Contract.

Section 2. Broker's Appointment and Services. City appoints Broker as a consultant and advisor to the City with respect to the Project. Broker's services include, generally, all work and services

described in, and in accordance with, the Proposal. Broker hereby accepts such appointment and agrees to diligently use commercially reasonable efforts in the performance of its duties and functions described in this Contract. Broker agrees to apply prudent, reasonable, and suitable business practices in the performance of its duties hereunder and shall exercise that degree of skill, competence, quality and professional care rendered by reputable and comparably credentialed companies performing the same or similar type of services. Broker is an independent contractor of the City and this Contract shall not be construed to create any association, employment or any express or implied agency relationship. City acknowledges that Broker is neither a design professional nor a contractor. The Broker shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations pertaining to the performance of this Contract.

Section 3. Fiduciary Relationship and Duties Owed to City.

3.1 Broker, Broker's agent, Andrew Rothfeder, and the City expressly acknowledge that the Broker, through Andrew Rothfeder and Rothfeder LLC, is performing the services provided by this Contract pursuant to a fiduciary relationship in which the City is dependent upon the Broker to render consulting and negotiating services with a third party on behalf of the City, and the Broker agrees to accept the undertaking to protect and benefit the interests of the City. In performing such services, the Broker shall, at all times, extend the following duties to the City:

- a. Dealing honestly and fairly, avoiding conflicts of interest and self-dealing;
- b. Loyalty to the City as its exclusive client in all related transactions;
- c. In all situations related to this engagement, acting exclusively in the best interests of the City;
- d. Confidentiality, including the duty to refrain from disclosing information received from the City when specifically directed to refrain from disclosure;
- e. Adherence to all directions given to the Broker by the City;
- f. Full disclosure of material information;
- g. Skill, care, and diligence in the transaction;
- h. Presenting all offers and counteroffers in a timely manner, unless previously directed otherwise in writing; and
- i. Disclosing all known facts and circumstances that materially affect the interests of the City in the transaction.

These duties shall be performed to the standard of conduct of one who is in a position of trust and is responsible for the interests of another party.

3.2 Broker specifically is not authorized to enter into any lease on behalf of City or to make any representations or commitments on behalf of City. Broker agrees that Broker shall act solely as City's single agent and broker and not as a transaction agent or broker, a lessee's agent or broker, or a joint agent or broker. Further, Broker shall be compensated only as provided in this Contract and shall not seek, receive, accept, or agree to accept any compensation or reimbursement from any Developer, lessee, potential lessee, or any other third party except as specifically authorized by this Contract or consented to in writing by the City with approval of City Council.

Section 4. Term. The term of this Contract shall commence on the Effective Date of this Contract and shall end on March 31, 2022. However, this Contract may be terminated for convenience by either party by providing no less than thirty (30) days written notice to the other party of the intent to terminate this Contract.

Section 5. Broker Fee and Payment.

5.1 Broker agrees to perform all work and services in Section 2 and to furnish all necessary labor, materials, equipment, machinery, tools, apparatus, and means of transportation related to such work and services at Broker's sole cost and expense. In consideration of the services provided, Broker shall be entitled to a fee for Broker's services ("Broker's Fee") of \$300,000.00 contingent upon execution of an option agreement and ground lease with Developer, as more fully described below.

5.2 Broker's Fee shall be deemed earned if and when, during the Term, (a) a lease is entered into between City and the Developer upon terms and conditions acceptable to City in its sole and absolute discretion, and (b) any due diligence, inspection, or similar time period that would permit the lessee to terminate the lease has expired without the lease having been terminated. City's obligation to pay Broker's Fee shall continue if City enters into a lease with Developer within one hundred twenty (120) days following the expiration or termination of this Contract.

5.3 Upon the full execution of a lease with Developer and the expiration of any due diligence period as described in subsection 5.2, the City will remit to the Broker as payment of the Broker's Fee the amount stated in section 5.1. Broker shall submit to the City an invoice no less than twenty days prior to the payment due date.

5.4 Broker will be entitled to (a) the Broker's Fee as described above in subsections 5.1 through 5.3, or (b) a flat fee of \$160,000.00 to be paid at the expiration of this Contract as extended by the one hundred twenty-day time period described above in subsection 5.2, if an option agreement and ground lease are not executed by the Developer.

5.5 It is understood and agreed to by the Parties that the City via City Council, the governing body, has made known its intentions to not sell property located south of Main Street between the Pensacola Bay Bridge and A Street absent exigent circumstances expressly declared to exist by the City Council (section 2-3-4, Pensacola Code), and further, the City Council has enacted Ordinance 25-20, declaring certain City-owned properties to be sensitive properties, including properties that are waterfront or that have a waterview, that require additional procedures before the City can consider selling or otherwise disposing of the City's rights in the real property. Nevertheless, should the City decide to sell all or part of the Project parcels, Broker will be entitled to a fee of \$300,000.00 in full satisfaction of its fee obligation from the City payable upon the sale of the parcel(s).

Section 6. Necessary Approvals. Broker shall maintain any professional licenses required to act as a broker or agent consistent with the scope of work described in this Contract.

Section 7. No Waiver. No waiver, alterations, consent or modification of any of the provisions of this Contract shall be binding unless in writing, approved by the City Council or Mayor, whichever is determined appropriate by the City Attorney in her/his sole opinion, and executed by all Parties.

Section 8. Governing Law. This Contract is governed and construed in accordance with the laws of the State of Florida. The law of the State of Florida shall be the law applied in the resolution of any claim, actions or proceedings arising out of this Contract.

Section 9. Venue. Venue for any claim, actions or proceedings arising out of this Contract shall be Escambia County, Florida.

Section 10. No Discrimination. Broker shall not discriminate on the basis of race, creed, color, national origin, sex, age, or disability, in the performance of this Contract.

Section 11. No Other Agreements. The Parties agree this Contract, and any subsequent amendments, modifications and/or addendums entered into among the Parties from time to time, contain all the terms and conditions agreed upon by the Parties. No other agreements, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind either Party.

Section 12. Remedies for Failure to Perform or Breach of Contract/Dispute Resolution.

12.1 Remedies. The City reserves the right to seek all remedies available under law in the event of a failure to perform or other breach of this Contract by the Broker, and the failure of the City to employ a particular remedy shall not be regarded by the Parties as a waiver of that or any other available remedy. The Broker reserves the right to seek all remedies available under law in the event of a failure to perform or other breach of this Contract by the City, and the failure of the Broker to employ a particular remedy shall not be regarded by the Parties as a waiver of that or any other available remedy.

12.2 Initial Meeting and Mediation. In the event of any claim, dispute, or other matter arising out of or relating to this Contract, the Parties shall attempt to resolve the dispute informally by meeting and conferring. The person representing a party at such meeting shall have absolute authority to resolve any dispute without further consultation. Any resolution of any aspects of the dispute shall be memorialized in writing.

12.3 Proceedings. In the event that issues remain unresolved after the processes described in Section 12.2, the Parties may seek all remedies available under law to resolve the remaining issues.

Section 13. Termination for Convenience. The City or Broker may terminate this Contract without cause upon thirty (30) days' prior written notice to the other Party. If terminated pursuant to this section, Broker shall be entitled to payment of all charges incurred prior to the date of termination and consistent with the provisions of subsection 5.2 of this Contract.

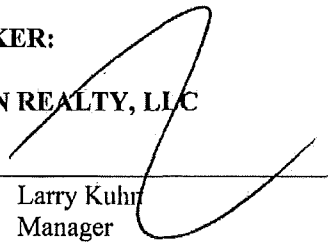
Section 14. Public Records Act. The Parties acknowledge that the Florida Public Records Act requires that contractors entering into contracts for services with public agencies and who are acting on behalf of the public agency are required to adhere to the provisions of Section 119.0701, *Florida Statutes*. The Parties acknowledge and agree to fulfill all obligations respecting required contract provisions in any contract entered into or amended after July 1, 2016, in full compliance pursuant to Section 119.0701, *Florida Statutes*, and obligations respecting termination of a contract for failure to provide public access to public records. The Parties expressly agree specifically that the contracting parties hereto shall comply with the requirements within Attachment A attached hereto and incorporated by reference.

Remainder of page left blank intentionally

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed and sealed the day and year first above written.

BROKER:

KUHN REALTY, LLC

By: 
Name: Larry Kuhn
Title: Manager

CITY OF PENSACOLA, FLORIDA

Mayor, Grover C. Robinson, IV

Witness:


Printed name: ERICKA L. BURNETT

City Clerk, Ericka L. Burnett

Approved as to Substance:

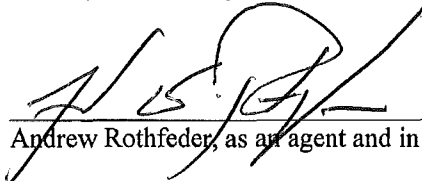
Department Director

Legal in form and valid as drawn:

Susan A. Woolf, City Attorney

Acknowledgement:

I hereby acknowledge and agree that I am acting as an agent for Kuhn Realty, LLC.


Andrew Rothfeder, as an agent and in his individual capacity

Attachment A

PUBLIC RECORDS: Broker shall comply with Chapter 119, Florida Statutes. Specifically, Broker shall:

- A. Keep and maintain public records required by the City to perform the service.
- B. Upon request from the City's custodian of public records, provide the City 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 Chapter 119, Florida Statutes, 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 term and following the completion of the Agreement if Broker does not transfer the records to the City.
- D. Upon completion of the Agreement, transfer, at no cost, to the City, all public records in possession of Broker or keep and maintain public records required by the City to perform the service. If Broker transfers all public records to the City upon completion of the Agreement, Broker shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Broker keeps and maintains public records upon completion of the Agreement, Broker shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request of the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

Failure by Broker to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Agreement by the City.

IF BROKER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BROKER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: THE OFFICE OF THE CITY ATTORNEY, (850) 435-1715, PUBLICRECORDS@CITYOFPENSACOLA.COM, 222 WEST MAIN STREET, PENSACOLA, FL 32502.

EXHIBIT "A"

PROPERTY

The land referred to herein below is situated in the County of Escambia, State of Florida, and is described as follows:

Lots 4 and 5 of VINCE WHIBBS SR. COMMUNITY MARITIME PARK, according to the Plat thereof as recorded in Plat Book 19, Page(s) 23 and 23A, of the Public Records of Escambia County, Florida.

EXHIBIT "B"

PROPOSAL

Andrew E. Rothfeder, as the agent for KUHN REALTY LLC, will perform real property services related to the development of Lots 4 and 5 at the Community Maritime Park. The scope of services shall include:

1. Research, analysis and strategy for creation of business terms and deal structure for an option agreement and ground lease (or sale) terms between the City and the Developer.
2. Participation with the City in negotiations with the identified Developer to arrive at mutually acceptable terms and agreements.
3. Serving as City's representative to enforce compliance with agreements throughout the Option Term, up to and including a lease, development agreement, or equivalent. This includes, but is not limited to:
 - a. Ensuring projects are developed that adhere to all applicable design standards and to the West Main Master Plan, created by DPZ CoDesign and Speck & Associates and dated November 24, 2019, and including the design guidelines dated November 21, 2019 and the project report dated November 24, 2019.
 - b. Ensuring compliance with time periods and payments.
 - c. Ensuring compliance with diversity and community covenant standards as set by the Mayoral Policy #20-01, Covenant with the Community.
 - d. Ensuring compliance with the design, construction, and ultimate operational goals of the City regarding the shared parking facility.
 - e. Serving as City's "Owner's representative" throughout the process, being a liaison, and providing coordination between the City, the Developer, and other consultants.

Robyn Tice

From: Ericka Burnett
Sent: Monday, March 8, 2021 10:45 AM
To: Robyn Tice
Subject: FW: [EXTERNAL] Fw: Community Maritime Park Revenue
Attachments: 20210301094836563.pdf

Ericka L. Burnett, CMC

City Clerk

Visit us at <https://www.cityofpensacola.com>

222 W Main St.

Pensacola, FL 32502

Office: 850.435.1606

eburnett@cityofpensacola.com



Florida has a very broad public records law. As a result, any written communication created or received by City of Pensacola officials and employees will be made available to the public and media, upon request, unless otherwise exempt. Under Florida law, email addresses are public records. If you do not want your email address released in response to a public records request, do not send electronic mail to this office. Instead, contact our office by phone or in writing.

From: Don Kraher
Sent: Monday, March 8, 2021 10:35 AM
To: Jared Moore <JMoore@cityofpensacola.com>; Ann Hill <AHill@cityofpensacola.com>; Sherri Myers <smyers@cityofpensacola.com>; Jennifer Brahier <JBrahier@cityofpensacola.com>; Casey Jones <cjones@cityofpensacola.com>; Teniade Broughton <TBroughton@cityofpensacola.com>; Delarian Wiggins <dewiggins@cityofpensacola.com>
Cc: Elaine Mager <EMager@cityofpensacola.com>; Sonja Gaines <SGaines@cityofpensacola.com>; Melanie Kruszona <MKruszona@cityofpensacola.com>; Ericka Burnett <EBurnett@cityofpensacola.com>
Subject: FW: [EXTERNAL] Fw: Community Maritime Park Revenue

Council President and Members of City Council

Please find attached as provided by a fellow Council Member.

Respectfully,

Don Kraher

Council Executive

Office of the City Council

222 W. Main Street

Pensacola, FL 32502

(850) 435-1686 – Office

(850) 384-6363 – Cell



City of Pensacola

Robyn Tice

From: Ericka Burnett
Sent: Monday, March 8, 2021 10:47 AM
To: Robyn Tice
Subject: FW: Kuhn contract

Ericka L. Burnett, CMC

City Clerk

Visit us at <https://www.cityofpensacola.com>

222 W Main St.

Pensacola, FL 32502

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From: Don Kraher
Sent: Monday, March 8, 2021 10:46 AM
To: Jared Moore <JMoore@cityofpensacola.com>; Ann Hill <AHill@cityofpensacola.com>; Sherri Myers <smyers@cityofpensacola.com>; Jennifer Brahier <JBrahier@cityofpensacola.com>; Casey Jones <cjones@cityofpensacola.com>; Teniade Broughton <TBroughton@cityofpensacola.com>; Delarian Wiggins <dewiggins@cityofpensacola.com>
Cc: Elaine Mager <EMager@cityofpensacola.com>; Sonja Gaines <SGaines@cityofpensacola.com>; Melanie Kruszona <MKruszona@cityofpensacola.com>; Ericka Burnett <EBurnett@cityofpensacola.com>
Subject: FW: Kuhn contract

Council President and Members of City Council

Please find below, as provided by a fellow Council Member, some questions and responses.

Respectfully,

Don Kraher

Council Executive

Office of the City Council

222 W. Main Street

Pensacola, FL 32502

(850) 435-1686 – Office

(850) 384-6363 – Cell



City of Pensacola

Mayor,

If you would please address the following information from Ms. Woolf....

The Mayor has asked me to provide you the following additional information:

- The payment of \$300,000 is based on a 3% commission on all monies collected by the proposed tenant in the first 10 years.
- The payment of \$300,000 will be triggered only if Silver Hills executes both the option agreement and a ground lease with the City.

Again, are you implying the lease with Silver Hills is \$1,000,000 per year? If this information is intended for us, it needs to be clarified now. It looks as if this lease is taking wild advantage and trying to confuse. If 4% for ALL lots over 10 years is around \$350,000, how are you justifying this for just two lots and claiming that is 3% over 10 years?

Also, why are you suggesting this needs to go back to marketing?

My constituents are pressing for answers and they deserve them.

Thanks again,

From: Grover C. Robinson, IV <GRobinson@cityofpensacola.com>
Sent: Monday, March 1, 2021 12:25 PM
Cc: Don Kraher <DKraher@cityofpensacola.com>; Amy Lovoy <alovoy@cityofpensacola.com>; Keith Wilkins <KWilkins@cityofpensacola.com>
Subject: Re: Kuhn contract

Thank you for your email.

First, as you said correctly in the meeting the City Council had already given me and administration the authority to negotiate a contract for real estate services up to \$323,000. While I would have liked to structure a deal that could have seen the city through the entire development process, the most important project is the parking garage which is a part of the Silver Hills deal. With this contract we are paying Andrew more for that but we can keep the most important piece of civic infrastructure moving forward.

Soon you will see the lease with Silver Hills and it will be structured to complete the parking garage without any dependence on another lease. When Amy has her briefing for you next week, it will be forwarded to you. I would rather tell the entire council at the same time, consistently rather than detailing to each member individually, so please look for your package to come from Amy.

Right now we could go back out to the market for marketing the remainder of the parcels or we could have the interested parties bring offers to us. Prior councils approved past marketing relationships without even \$23,000 so we are ahead of former positions.

Finally, I firmly believe in the deal the city is providing to lease to Silver Hills. Andrew has done his work to secure that and he should be compensated for that effort. The city council simply has a chance to approve or not. If you chose not to approve, you agree to pay him \$160,000 it is simply part of the deal for council to choose.

Thank you for your questions and your patience.

Grover

Sent from my iPhone

Good Morning Mayor and Ms. Lovoy,

I am verifying the terms of the contract with Kuhn and Andrew Rothfeder before I respond to our constituents.

The contract states that 3% of the 10 year lease for Silver Hills would amount to \$300,000. This implies lots 4 and 5 would generate \$1,000,000 in lease payments per year. Is this accurate?

Second, the agreement is only for the Silver Hill contract. Who is going to secure leases with the other two developers, as other than the \$23,000 remaining, you will have exhausted the money budgeted for this effort.

Third, will this leasing fee be split with the leasing agent for Silver Hill?

Finally, why is there still a bottom of \$160,000? This is outside normal contracts dealing with a leasing agent.

Thank you in advance for a quick response- our constituents are biting at the bit to understand this contract.