

FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY AND AHRENS COMPANIES

THIS FIRST AGREEMENT is hereby made and entered into this ____ day of April, 2023, (the “effective date”) 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, (hereafter referred to as “CRA”), whose address is 20 N. Swinton Avenue, Delray Beach, Florida 33444, and **AHRENS ENTERPRISES, INC. dba AHRENS COMPANIES**, a Florida corporation (hereafter referred to as “Contractor”), whose address is 1461 Kinetic Road, Lake Park, FL 33403.

WITNESSETH:

WHEREAS, the CRA and Contractor previously entered into an Agreement, dated February 28, 2023, for the 95 SW 5th Avenue Commercial Building Construction Project pursuant to the CRA’s Invitation to Bid No. 2022-01-R and addendums (“ITB”), and the Contractor’s response to the Invitation to Bid, including all documents required thereunder (“Agreement”); and

WHEREAS, the CRA and Contractor desire to enter into this First Amendment to add a liquidate damages provision and to clarify various provisions from the ITB in the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereafter set forth, the Contractor and the CRA agree as follows:

1. That the recitals set forth above are true and correct and are incorporated herein by reference.
2. Article 6 Payment Procedures is added to the Agreement as follows:

Article 6. PAYMENT PROCEDURES.

Contractor shall submit invoices in accordance with Section 2 of the Invitation to Bid.

6.1 Progress Payments. The CRA shall make progress payments on account of the Contract Price on the basis of Contractor’s invoices on or about the First day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the Contractor’s Schedule of Values dated December 8, 2022 and in the case of Unit Price Work based on the number of units completed or, in the event there is no schedule of values, as provided in the CRA’s Invitation to Bid.

6.1.1 Prior to Substantial Completion progress payments will be made in an amount equal to 90% of the work completed until 50% of the work has been completed and installed, then payment may be made in an amount equal to 95% of the work completed, but in each case, less the aggregate of payments previously made and less such amounts as CRA shall determine, or the CRA may withhold, in accordance with Section 6.1.3 of this Agreement.

6.1.2. Prior to Substantial Completion, progress payments for materials and equipment not incorporated in the Work but delivered and suitably stored and accompanied by documentation satisfactory to the CRA, as provided in the Invitation to Bid, will be made in an amount equal to 0% as established by the schedule of values.

6.1.3 The CRA is entitled to withhold amounts due Contractor for any defective or non-conforming work or for liquidated damages.

6.2 Final Payment. Upon final completion and acceptance of the Work in accordance with Section 3 of the Invitation to Bid, the CRA shall pay the remainder of the Contract Price.

3. Article 7 Liquidated Damages is added to the Agreement as follows:

ARTICLE 7. LIQUIDATED DAMAGES

The CRA and Contractor recognize that time is of the essence of this Agreement and that the CRA will suffer financial loss if the Work is not completed within the times specified in Article 5 above, plus any extensions thereof allowed in accordance with Article 5. Work shall mean the goods the Contractor shall provide or the services the Contractor shall perform in accordance with Article 2 above.

They also recognize that the actual loss suffered by the CRA if the Work is not completed on time is not readily ascertainable at the time of entering this Contract. Accordingly, instead of requiring any such proof, the CRA and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the CRA five hundred dollars (\$500.00) for each day that expires after the time specified in Article 5 for substantial completion until the Work is substantially complete. After Substantial Completion if Contractor shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by the CRA, Contractor shall pay CRA five hundred dollars (\$500.00) for each day that expires after the time specified in Article 5 for completion and readiness for final payment. Contractor expressly acknowledges that such sum is not payable as a penalty but as liquidated damages representing a reasonable estimate of delay damages, inconvenience and additional overhead and costs likely to be sustained by the CRA, estimated at the time of executing the Agreement. If the CRA reasonably believes in its discretion that Substantial Completion will be delayed, it shall be entitled, but not required to withhold from any amounts otherwise due the Contractor an amount then believed by the CRA to be adequate to recover liquidated damages applicable to such delays. Partial use or occupancy of the Work shall not result in the Work deemed substantially completed, and such partial use or occupancy shall not be evidence of Substantial Completion.

4. Article 8 No Damages for Delay is added to the Agreement as follows:

Article 8. NO DAMAGES FOR DELAY.

8.1 All time in the Contract Documents is calculated on a consecutive calendar day basis.

8.2 Time is of the essence in this Contract, and any breach of same shall go to the essence hereof, and Contractor, in agreeing to complete the Project within the time herein mentioned, has taken into consideration and made allowances for all reasonable hindrances and delays incident to his work.

8.3 Contractor agrees to commence the Project when directed by the CRA and to diligently and continuously perform such work and to coordinate the work with other work being performed on the Project by other trades so that the CRA shall not be delayed by any act or omission of Contractor in completion of the Project within the time specified above.

8.4 Contractor shall not be entitled to any claim for damages on account of hindrance or delays from any cause whatsoever, but if caused by any act of God or active interference on the part of the CRA, such act, hindrance or delay may only entitle the Contractor to receive an extension of time as its sole and exclusive remedy, as set forth in Section 1 paragraph 59 of the Invitation to Bid

8.4.1 Any extension of time to complete the Project maybe allowed at the sole discretion of the CRA provided the Contractor provides the CRA with notice in writing of the cause of said act, hindrance, or delay within **twenty (20) days** after its occurrence.

8.4.2 In the event the request for extension is not made in writing within that twenty-day (20) time period, Contractor acknowledges and agrees it has forever waived any and all rights to such an extension.

8.4.3 All extensions of time shall be authorized only by a written change order executed by the CRA and Contractor; in the absence of a written and fully executed change order, Contractor shall not be entitled to any claim for additional time.

8.4.4 This "no damage for delay" provision shall encompass any damages for delay or disruption even if the Contractor completes construction of the Project in a timely fashion in accordance with this Contract.

8.4.5 Damages as referenced in this "no damage for delay" provision shall include any type of damages that are or could be awarded by any court or arbitration panel such as, by way of general example, but not limitation, tort, contract, strict liability, consequential damages, liquidated damages and/or punitive damages.

8.4.6 The Contractor recognizes and specifically acknowledges the terms and conditions of this "no damage for delay" clause upon execution of this Contract.

5. Article 9 Public Records is added to the Agreement as follows:

Article 9. PUBLIC RECORDS:

CONTRACTOR shall comply with the applicable provisions of Chapter 119, Florida Statutes. Specifically, CONTRACTOR shall:

A. Keep and maintain public records required by the CRA to perform the service.

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 contract term and following completion of the contract if the CONTRACTOR does not transfer the records to the CRA.

D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the CONTRACTOR or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the CRA upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the contract, the contractor 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 CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF
CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE
PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF
PUBLIC RECORDS AT**

**KIM PHAN
561-276-8640
KIMP@MYDELRAYBEACH.COM
20 NORTH SWINTON AVENUE
DELRAY BEACH, FLORIDA 33444**

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

6. Article 10 Independent Contractor is added to the Agreement as follows:

ARTICLE 10. INDEPENDENT CONTRACTOR

Contractor has been procured and is being engaged to provide services to the CRA as an independent contractor, and not as an agent or employee of the CRA. Accordingly, Contractor shall not attain, nor be entitled to, any rights or benefits of the CRA, nor any rights generally afforded classified or unclassified employees. Contractor further understands that Florida Workers' Compensation benefits available to employees of the CRA are not available to Contractor and agrees to provide workers' compensation insurance for any employee or agent of Contractor rendering services to the CRA under this Agreement.

7. That except as amended herein, the CRA and Contractor ratify, approve and reaffirm the terms of the Agreement and shall remain in full force and effect, except as amended herein.

8. In the event of any conflict or ambiguity by and between the terms and provisions of the Agreement and this First Amendment, the terms and provisions of this First Amendment shall control to the extent of any such conflict or ambiguity. In any other respects, the Agreement remains unchanged.

IN WITNESS WHEREOF, the parties have executed this First Amendment on the dates hereinafter written.

DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY

By: _____
Adam Frankel, Chair

ATTEST:

By: _____
Renée A. Jadusingh, CRA Executive Director

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Kim N. Phan, Legal Advisor

AHRENS ENTERPRISES, INC. dba
AHRENS COMPANIES, a Florida
Corporation

[SEAL]

By: _____

Printed Name:

Title:

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2023, by _____ (name of person), as _____ (type of authority) for _____ (name of party on behalf of whom instrument was executed).

Personally known ____ OR Produced Identification
Type of Identification Produced _____

Notary Public – State of Florida