

AGREEMENT

THIS AGREEMENT is made by and between the City of Delray Beach, a Florida municipal corporation (hereinafter referred to as "City"), whose address is 100 N.W. 1st Avenue, Delray Beach, FL 33444 and The Color Nine Group, LLC., a District of Columbia Limited Liability Corporation (hereinafter referred to as "Firm"), authorized to do business in Florida, whose address is 1233 F St. NE Unit B, Washington, DC, 20002, this 16th day of November, 2021.

WHEREAS, the City has a need to obtain services relating to Federal Legislative Lobbying Services (collectively herein referred to as "Services"); and

WHEREAS, Lobbying Services are expressly exempted from the competitive procurement process pursuant to "Exceptions" Section (B)(iv) of the City's Purchasing Policies and Procedures Manual; and

WHEREAS, the Firm has provided the City a proposal to perform lobbying services; and

WHEREAS, the Firm agrees to provide lobbying services to the City in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration of which the parties hereto acknowledge, the parties agree as follows:

- 1 The above recitals are true and correct and are incorporated herein by reference.
- 2 The Firm shall provide lobbying services to the City, in accordance with and pursuant to Firm's proposal attached hereto and incorporated herein as Exhibit A and the terms and conditions of this Agreement.
- 3 The City shall pay the Firm in accordance with the pricing schedule detailed in Exhibit A.
- 4 This Agreement is in full force and effect upon full execution by the City for a term of three (3) years with the option of three one-year renewal periods subject to mutual acceptance by City and the Firm.
- 5 The City, at its sole discretion, reserves the right to terminate this Agreement with or without cause immediately upon providing written notice to Firm. Upon receipt of such notice, the Firm shall not incur any additional costs under the Agreement. The City shall be liable only for reasonable costs incurred by Firm prior to the date of the notice of termination. The City shall be the sole judge of "reasonable costs."
- 6 By entering into this Agreement Firm acknowledges its obligation to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." Firm affirms and represents it is registered with the E-Verify system, utilizing same, and will continue to utilize same as required by law. Compliance with this section includes, but is not limited to, utilization of the E-Verify System to

verify the work authorization status of all newly hired employees and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply with this section will result in the termination of this Agreement, or if your subcontractors knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If terminated for a violation of the statute by Firm, the Firm may be prohibited from conducting future business with the City or awarded a solicitation or contract for a period of 1 year after the date of termination. All costs incurred to initiate and sustain the aforementioned programs shall be the responsibility of the Firm.

7 The Firm shall indemnify and hold harmless the City and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the City or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of the agreement by the Firm or its employees, agents, servants, partners, principals, or subcontractors. The Firm shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. The Firm expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Firm shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the City or its officers, employees, agents, and instrumentalities as herein provided the obligations of this section shall survive the term of this Agreement.

8 Firm shall provide certificates of insurance to the City evidencing its insurance coverage and naming the City as an additional insured. Such insurance shall be in an amount and form as described in Exhibit B and shall be delivered to the City prior to execution of this Agreement. If Firm fails to provide the certificates of insurances in a form acceptable to the City, the City may immediately terminate this Agreement.

9 Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For CITY:

City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444
Attn: City Manager

With copy to:

City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444
Attn: City Attorney

For FIRM:

The Color Nine Group, LLC.
1233 F St. NE Unit B
Washington, DC, 20002
Attn: Michael Willis, President
Email: michael.willis@thecolorninegroup.com

10 Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party.

11 This Agreement shall be construed in accordance with the City of Delray Beach's Code of Ordinances and the laws of the State of Florida. Any dispute relating to this Agreement shall only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court.

12 **IF THE FIRM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE FIRM'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.**

- a. Firm shall comply with public records laws, specifically to:
- i. Keep and maintain public records required by the City to perform the service.
 - ii. 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 Florida Statute or as otherwise provided by law.
 - iii. 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 completion of the Agreement if the Firm does not transfer the records to the City.
 - iv. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Firm or keep and maintain public records required by the City to perform the service. If the Firm transfers all public records to the City upon completion of the Agreement, the Firm shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure

requirements. If the Firm keeps and maintains public records upon completion of the Agreement, the Firm shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

- v. If the Firm does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

13. Firm is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Firm and its subcontractors and lower tier subcontractors. Firm understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Firm or its subcontractors and lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

14. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.

15. The documents listed below are a part of this Agreement and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:

- a. Terms and conditions as contained in this Agreement.
- b. The City's purchase order terms and conditions.
- c. Any subsequent information submitted by Firm during the evaluation and negotiation process.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the City and the Firm executed this Agreement as of the day and year first above written.

ATTEST:

Katerri Johnson
Katerri Johnson, City Clerk

CITY OF DELRAY BEACH
By: Shelly Petrolia
Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

Lynn Gelm
Lynn Gelm, City Attorney

THE COLOR NINE GROUP, LLC.
By: Michael Willis
Print Name: Michael Willis
Title: President

(SEAL)

STATE OF DC
COUNTY OF Washington

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 26th day of October, 2021, by MICHAEL WILLIS (name of person), as _____ (type of authority) for President (name of party on behalf of whom instrument was executed).

Personally known ___ OR Produced Identification ✓
Type of Identification Produced DC Drivers License



Kristin Bovell
Notary Public - State of Florida
District of Columbia

EXHIBIT B

INSURANCE REQUIREMENTS

The required insurance coverage is to be issued by an insurance company authorized, licensed and registered to do business in the State of Florida, with the minimum rating of B+ or better, in accordance with the latest edition of A.M. Best's Insurance Guide. This insurance shall be documented in certificates of insurance which provides that the City of Delray Beach shall be notified at least thirty (30) days in advance of cancellation, non-renewal, or adverse change. The receipt of certificates or other documentation of insurance or policies or copies of policies by the City or by any of its representatives, which indicate less coverage than is required, does not constitute a waiver of Firm's obligation to fulfill the insurance requirements herein. Deductibles must be acceptable to the City of Delray Beach.

Firm shall provide insurance coverage as follows:

1. Workers' Compensation Insurance – as required by law.
2. Employer's Liability Insurance - \$100,000 per occurrence, \$100,000 for each disease, and \$500,000 for aggregate disease
3. Comprehensive General Liability Insurance – with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for Bodily Injury and Property Damage.
4. Automobile Liability Insurance – Any employee, contractor, or subcontractor of the Firm that drives a vehicle onto City property must provide a copy of their own auto insurance with their personal limits to the City.
5. Professional Liability Insurance - with limits of not less than \$1,000,000 per occurrence.

All renewal or replacement certificates of insurance shall be forwarded to the City Purchasing Department located at 100 N.W. 1st Ave., Delray Beach, FL 33444.



The Color Nine Group

Proposed Scope of Service and Fee Structure for the City of Delray Beach, Florida

Scope of Service:

The Color Nine Group, LLC shall provide services and advice including, but not limited to the following:

A. Represent the City of Delray Beach in interacting with the White House, Members of Congress and staff persons, federal agencies, boards, commissions, and legislative bodies.

- Provide research and timely written and oral information to the City of Delray Beach as specified by the City Manager or their designee; on matters that include, but are not limited to:
 - Existing and proposed federal laws and regulations that affect City interests. Reports on and testimony from legislative hearings
 - The development and progress of federal issues affecting specified City interests.
 - Federal agency and departmental regulations, guidelines, directives, and other instruments of administrative policy.
- Propose and develop opportunities that will access funding at the policy making level. **Research and identify grant funding or other opportunities for funds.**
 - Technical reports and memoranda from federal agencies affecting City projects and how they affect project costs.

B. Additional responsibilities include:

- Proactively recommend and develop legislative positions for proposed laws and regulations that affect the interests and priorities of the City.

- Arrange meetings for City elected officials and personnel with Congressional members and staff. Provide logistical support and attend those meetings when necessary.
 - Attend City Commission meetings as well as the Strategic Planning and Finance Committee meetings as requested by the City Manager, or their designee; to report on activities.
 - Engage in advocacy to promote the City's position on priority issues, including appropriate interest groups, the U.S. Conference of Mayors and the National League of Cities.
- C. The Color Nine Group, LLC shall submit regular reports to the City Manager, or their designee. These reports will be the primary vehicle for communication of legislative action to the Mayor and City Commission and all City departments.
- E. Provide to the City monthly itemized invoices for compensation related to services.
- F. Unless the Color Nine Group, LLC and the City mutually agree that on-site visits are unnecessary, the contractor shall make at least two (2) annual on-site visits to the City of Delray Beach to confer with City officials about federal issues.

Fee Structure:

The proposed cost of services described above is \$43,200 and can be paid in twelve (12) equal monthly installments. This fee will include all profit, overhead, travel to and from the City of Delray Beach up to two (2) times per year, and other administrative costs.

CITY ATTORNEY OFFICE - LEGAL REVIEW CHECKLIST

Name of Agreement: Funding Agreement Between the City of Delray Beach and The Color Nine Group, LLC

Department: City Manager's Office

Contact person: Lauren Czencz

City Manager approval

City Commission approval

Reviewed by Purchasing

Agenda item #:

Agenda meeting date:

Resolution #: 158-21

Agreement Action:

| | | | |
|--------------------------------------|--------------------------------|----------------------------------|-------------------------------------------------------------------------------------------------------|
| New <input checked="" type="radio"/> | Renewal* <input type="radio"/> | Amendment* <input type="radio"/> | *Renewal: Only change is the agreement term *Amendment: For changes other than/in addition to term |
|--------------------------------------|--------------------------------|----------------------------------|-------------------------------------------------------------------------------------------------------|

Does the Contractor require the City to sign first?: No

For City Attorney Use only:

| Agreement Terms: | Comments/Specific Provision in Agreement |
|-------------------------------------|-----------------------------------------------------------|
| Term (Duration of Agreement) | 4: three years with the option of three one-year renewals |
| Termination Clause | 5: with or without cause |
| Renewal Clause | 4: three one-year renewal options |
| Insurance | City standard |
| Indemnification | City standard |
| Assignment | 13: shall not assign |
| Fiscal Funding Requirement | 14 |
| FL. Public Records Provision (2016) | 12 |
| Inspector General Provision | 13 |
| Governing Law | Florida |
| Venue | Palm Beach County |
| Attorney's fees | 11: each party shall pay their own fees |
| E-verify | 6 |

| Business Principles: | Comments |
|-----------------------|--------------|
| Fees: Total Value | \$259,200.00 |
| Fees: Per Fiscal Year | \$43,200.00 |

| Other Issues: | Comments |
|---------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Non-Negotiable Issues/ Miscellaneous Issues/ Special Considerations | Lobbying Services are expressly exempted from the competitive procurement process pursuant to "Exceptions" Section (B)(iv) of the City's Purchasing Policies and Procedures Manual |

Consistent with applicable policies including, but not limited to, Procurement policies. Yes

Attorney: Kelly Brandon, Esq.

Reviewed and approved as to form and legal sufficiency only