

AGREEMENT

THIS IS AN AGREEMENT, made this 17 day of November, 2021, by and between:

THE DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY, a public agency organized and existing under the laws of the State of Florida, with a business address of 20 N. Swinton Avenue, Delray Beach, Florida 33444, hereinafter referred to as "CRA".

and

REP SERVICES, INC., a Florida corporation, with a principal address of 165 Jessup Avenue, Longwood, Florida 32750, hereinafter referred to as "CONTRACTOR". CRA and CONTRACTOR may hereinafter collectively be referred to as the "PARTIES".

WITNESSETH:

WHEREAS, the CRA desires to buy various equipment and amenities for parks and playgrounds with related services; and

WHEREAS, the CRA desires to acquire these products and services from CONTRACTOR utilizing existing contract prices provide to Clay County, Florida pursuant to its Solicitation RFP No. 18/19-2 and consistent with CONTRACTOR proposal attached as Exhibit "A"; and

WHEREAS, in accordance with Solicitation RFP No. 18/19-2, Clay County, entered into a three (3) year agreement with CONTRACTOR effective June 3, 2019, with the option to renew for two (2) additional terms of (1) one-year; and

WHEREAS, the CRA desires to buy various equipment and amenities for parks and playgrounds with related products and services from CONTRACTOR on the same terms, conditions, and pricing provided under Clay County Solicitation RFP No. 18/19-2, subject to the terms and conditions of this Agreement, the CRA's Purchasing Policies and Procedures, local law and Florida law; and

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the CRA and CONTRACTOR as follows:

1. Services; Responsibilities, and Time for Performance. CONTRACTOR agrees to provide the products and services in accordance with the Clay County Solicitation RFP No. 18/19-2 and the CONTRACTOR's response, except as modified herein.

1.1 The CONTRACTOR shall provide equipment and amenities for parks and playgrounds with related services for the CRA, in accordance with and pursuant to the same terms, conditions, and pricing of Solicitation RFP No. 18/19-2 procured by Clay County, except as modified herein, and consistent with Exhibit "A".

- 1.2 This Agreement shall terminate on June 2, 2022.
- 1.3 CONTRACTOR shall furnish all services, labor, and materials necessary and as may be required in the performance of this Agreement. The CONTRACTOR shall perform all of its obligations pursuant to this Agreement in a professional and timely manner.
- 1.4 The documents listed below are 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. Terms and Conditions of Clay County Solicitation RFP No. 18/19-2, attached as Exhibit "B".
 - c. Contractor's response to Solicitation RFP No. 18/19-2 and any subsequent information submitted by Contractor during the evaluation, attached as Exhibit "C".
2. Compensation and Method of Payment. The CONTRACTOR shall provide the equipment and amenities with related services for the CRA in accordance with the same terms, conditions, and pricing of Clay County Solicitation RFP No. 18/19-2, except as modified herein. The CRA shall pay CONTRACTOR within thirty (30) days of receipt of an invoice documenting the services provided by CONTRACTOR pursuant to this Agreement, and the completion to the sole and absolute discretion of the CRA.
 - 2.1 Subject to the prior written approval of the CRA, the CRA shall be responsible for any additional hourly charges. The CONTRACTOR shall submit all proposed charges to the CRA's Executive Director for approval prior to CONTRACTOR authorizing the work that would result in such charges.
 - 2.2 Except as provided in Section 2.1, the CRA shall not be responsible for any additional costs, fees, or expenses unless the CRA executes a written amendment to this Agreement that provides for any consideration to be paid by the CRA.
3. Term and Termination. This Agreement shall take effect upon execution by both parties and shall terminate on June 2, 2022 ("Term") with the option to renew for two (2) additional terms of (1) one-year as set forth in the Clay County Solicitation RFP No. 18/19-2.
 - 3.1 This Agreement may be terminated by either party for cause, or by the CRA for convenience, upon thirty (30) days written notice by the CRA to CONTRACTOR. Upon termination by CRA, CONTRACTOR shall cease all work performed hereunder and CRA shall pay to CONTRACTOR any earned and unpaid portion of the compensation

due CONTRACTOR.

4. Insurance. The CONTRACTOR shall not commence any performance pursuant to the terms of this Agreement until certification or proof of insurance has been received and approved by the CRA.

The required insurance coverage is to be issued by an insurance company authorized and licensed to do business in the State of Florida, with the minimum rating of A- VIII or better, in accordance with the latest edition of AM Best's Insurance Guide. This insurance shall be documented in certificates of insurance which provides that the CRA 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 CRA or by any of its representatives, which indicate less coverage than is required, does not constitute a waiver of the CONTRACTOR'S obligation to fulfill the insurance requirements herein. Deductibles must be acceptable to the CRA.

The CONTRACTOR must submit a current Certificate of Insurance, naming the Delray Beach Community Redevelopment Agency as an additional insured and list as such on the insurance certificate. New certificates of insurance are to be provided to the CRA upon expiration.

The CONTRACTOR shall provide insurance coverage as follows, and shall carry:

- a. Workers' Compensation Insurance – as required by law.
- b. Employer's Liability Insurance - \$1,000,000 per occurrence, \$1,000,000 for each disease, and \$2,000,000 for aggregate disease.
- c. 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 which must include:
 - i. Premises and/or Operations on an occurrence basis.
 - ii. Independent contractors.
 - iii. Products and/or Completed Operations Liability on an occurrence basis.
 - iv. Explosion, Collapse, and Underground Coverages.
 - v. Broad Form Property Damage.
 - vi. Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement.
 - vii. Personal Injury Coverage with Employees and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.
- d. Automobile Liability Insurance - for owned, non-owned and hired vehicles – with a limit of not less than \$1,000,000 per occurrence, combined single limit for

Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office.

If no deductible for insurance is referenced above, the CRA reserves the right to require such deductibles which shall be determined by the CRA, but not less than \$25,000 per claim.

The Comprehensive General Liability insurance policy must include coverage that is not more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Offices, and the policy must include coverage's for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, products, completed operations, and personal injury. Personal injury coverage shall include coverage that has the Employee and Contractual Exclusions removed.

5. Indemnification. The CONTRACTOR agrees to protect, defend, indemnify, and hold harmless the CRA, its officers, employees, and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges, and other expenses or liabilities of every kind in connection with or arising directly out of the work agreed to be performed herein, to the extent caused by the error, omission, negligence, recklessness, or intentional wrongful misconduct of CONTRACTOR, its employees, servants, agents, and subcontractors. Without limiting the foregoing, any and all such claims, suits, etc., relating to defects in the Services provided, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, is included in this indemnity.
6. Independent Contractor. This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the CONTRACTOR is an independent contractor under this Agreement and not the CRA's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. The CONTRACTOR shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONTRACTOR's activities and responsibilities hereunder. The CONTRACTOR agrees that it is a separate and independent enterprise from the CRA, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the CRA and the CRA will not be liable for any obligation incurred by CONTRACTOR, including but not limited to unpaid minimum wages and/or overtime premiums.
7. Assignments; Amendments. This Agreement, or any interest herein, shall not be

assigned, transferred or otherwise encumbered, under any circumstances, by CONTRACTOR without the prior written consent of CRA. The CRA's Executive Director may further approve and amend the Original Agreement by executing a written agreement signed by both parties.

8. Attorney's Fees. In the event it becomes necessary for either party herein to seek legal means to enforce the terms of the Agreement, the prevailing party shall be entitled to its reasonable attorney fees and court costs and paralegal fees at both the trial and appellate levels, to the extent permitted by law.
9. Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Florida.
10. Venue. Venue for litigation concerning this Agreement shall be in Palm Beach County, Florida.
11. Severability. If any portions of this Agreement shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed and enforced as if such provisions had not been included.
12. Notices. Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified mail, addressed to the party for whom it is intended at the place last specified or by facsimile transfer with confirmation thereof. The place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective place for giving of notice, to-wit:

For CRA: Renée A. Jadusingh, Esq., Executive Director
Delray Beach Community Redevelopment Agency
20 N. Swinton Avenue
Delray Beach, FL 33444
Telephone No. (561) 276-8640
Facsimile No. (561) 276-8558

Email Copy to: Kim N. Phan, Esq, Legal Advisor
Kimp@mydelraybeach.com

For Contractor: Rep Services, Inc.
165 W. Jessup Ave.,
Longwood, FL 32750

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

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

13.2 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.

13.3 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 this Agreement term and following completion of this Agreement if the CONTRACTOR does not transfer the records to the CRA.

13.4 Upon completion of this Agreement, 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, ESQ
561-276-8640
KIMP@YDELRAYBEACH.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.

14. Certification and Scrutinized Company Requirements. The CRA shall have the option to terminate this Agreement if CONTRACTOR:

14.1 Is found to have submitted a false certification as provided under section 287.135 (5) Florida Statutes;

14.2 Has been placed on the Scrutinized Companies that Boycott Israel List;

14.3 Has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or

14.4 Has been engaged in business operations in Cuba or Syria.

15. Patriot Act Requirements. Each party shall take any actions that may be required to comply with the terms of the USA Patriot Act of 2001, as amended, any regulations promulgated under the foregoing law, Executive Order No. 13224 on Terrorist Financing, any sanctions program administered by the U.S. Department of Treasury's Office of Foreign Asset Control or Financial Crimes Enforcement Network, or any other laws, regulations, executive orders or government programs designed to combat terrorism or money laundering, if applicable, with respect to this Agreement. Each party represents and warrants to the other party that it is not an entity named on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Department of Treasury, as last updated prior to the date of this Agreement.
16. Default. In the event the CONTRACTOR fails to comply with the provisions of this Agreement, the CRA may declare the CONTRACTOR in default and notify it in writing, giving a reasonable time to cure the default, but in no event shall this time period exceed five (5) calendar days unless otherwise agreed to by the parties. In such event, the CONTRACTOR shall only be compensated for any services completed as of the date written notice of default is served. Furthermore, the amount of compensation to the CONTRACTOR in the event of default, shall be determined by deducting any additional costs, charges and/or damages incurred by the CRA due to the CONTRACTOR'S default.
17. Acceptance of Agreement. Execution of this Agreement by both parties signifies agreement with all the terms and conditions.
18. To the extent there is any conflict between the terms and conditions of this Agreement and any Exhibit to the Agreement, the terms of this Agreement shall control.

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