

BID WAIVER 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 NW 1st Avenue, Delray Beach, FL 33444 and BJCE, Inc. (herein after referred to as "Contractor") whose address is 1300 N.W. 17th Avenue, Suite 273G, Delray Beach, FL 33445 is entered into this _____ day of _____, 20____.

WHEREAS, the City desires to provide management services for the Delray Beach Golf Club and Lakeview Golf Club; and

WHEREAS, the current Agreement for management services for the Delray Beach Golf Club and Lakeview Golf Club has been extended in accordance with City policy and will expire on October 30, 2021; and

WHEREAS, the City's Purchasing Policy and Procedures do not provide for additional options to extend the aforementioned contract; and

WHEREAS, during the City Commission Budget Workshop Meeting held on August 24, 2021, the City Commission decided to seek Letters of Interest (LOI) for a Public Private Partnership (P3) for the redesign, construction, and management of the City-owned 18-hole golf course and clubhouse; and

WHEREAS, based on the direction of the City Commission, continuing with golf course management services will allow for continuance of operations during this period; and

WHEREAS, it is in the best interest of the City to waive the full open and competitive acquisition process to continue management services for the Delray Beach Golf Club and the Lakeview Golf Club; and

WHEREAS, the City desires to procure these services from Contractor, in accordance with the City's Bid Waiver policy and subject to the terms and conditions of this Agreement, the City's Purchasing ordinance, and Florida law; and

WHEREAS, the Contractor agrees to 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 Contractor shall provide management services for the Delray Beach Golf Club and Lakeview Golf Club to the City, in accordance with and pursuant to Contractor's proposal, attached hereto and incorporated herein as Exhibit A, and the terms and conditions of this Agreement.

3 This Agreement is in full force and effect upon full execution by the City and shall remain in effect for a term of one (1) year.

4 The City, at its sole discretion, reserves the right to terminate this Agreement with or without cause immediately upon providing written notice to Contractor. Upon receipt of such notice, the Contractor shall not incur any additional costs under the Agreement. The City shall be liable only for reasonable costs incurred by Contractor prior to the date of the notice of termination. The City shall be the sole judge of "reasonable costs."

5 The Contractor 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 Contractor or its employees, agents, servants, partners, principals, or subcontractors. The Contractor 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 Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor 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.

6 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 CONTRACTOR:

BJCE, Inc.
1300 N.W 17th Avenue
Suite 273G
Delray Beach, FL 33445
Attn: Sharon S. Painter, CEO

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

8 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. It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this contract or interpret same, or if any administrative proceeding is brought for the same purposes, each party shall pay their own attorney's fees and cost, including appellate fees and costs.

9 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 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. Contractor 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 Contractor 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 Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all

public records to the City upon completion of the Agreement, 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 Agreement, the Contractor 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 Contractor 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.

10 Contractor 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 Contractor and its subcontractors and lower tier subcontractors. Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor 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.

11 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.

12 By entering into this Agreement Contractor acknowledges its obligation to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." Contractor 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 subcontractor 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 Contractor, the Contractor 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 Contractor.

13 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 Contractor during the evaluation and negotiation process.

[Remainder of page intentionally left blank]

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

ATTEST:

CITY OF DELRAY BEACH

Katerri Johnson, City Clerk

By: _____
Shelly Petrolia, City Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

BJCE, Inc.

By: Sharon S. Painter

Print Name: Sharon Painter

Title: CEO

(SEAL)

STATE OF Florida
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 14th day of September, 2021, by Sharon Painter (name of person), as CEO (type of authority) for BJCE, Inc. (name of party on behalf of whom instrument was executed).

Personally known & OR Produced Identification _____
Type of Identification Produced _____

Cunell
Notary Public – State of Florida



CYNTHIA M. DOLL
Commission # HH 099151
Expires June 29, 2025
Bonded Thru Budget Notary Services

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[Remainder of page intentionally left blank]

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CITY OF DELRAY BEACH

Katerri Johnson, City Clerk

By: _____
Shelly Petrolia, City Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

BJCE, Inc.

By: Sharon Painter

Print Name: Sharon Painter

Title: CEO

(SEAL)

STATE OF Florida
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 14th day of September, 2021, by Sharon Painter (name of person), as CEO (type of authority) for BJCE Inc. (name of party on behalf of whom instrument was executed).

Personally known X OR Produced Identification _____
Type of Identification Produced _____

Cynthia M. Doll
Notary Public – State of Florida



CYNTHIA M. DOLL
Commission # HH 099151
Expires June 29, 2025
Bonded Thru Budget Notary Services