

**CITY OF NORTH MIAMI**  
**PROFESSIONAL SERVICES AGREEMENT**  
(Playground Equipment & Fitness Trail – Piggyback Agreement)  
(School District of Palm Beach County)

**THIS PROFESSIONAL SERVICES AGREEMENT** (“Agreement”) is made and entered into this 14<sup>th</sup> day of April, 2015 by and between the **City of North Miami**, a Florida municipal corporation, having its principal office at 776 NE 125<sup>th</sup> Street, North Miami, FL 33161 (“City”) and the **Superior Park Systems, Inc.**, a for-profit corporation registered and authorized to do business in the State of Florida, having its principal office at 1418 Scott Street, Hollywood, FL 33020 (“Contractor”). The City and Contractor shall collectively be referred to as the “Parties”, and each may individually be referred to as a “Party”.

**RECITALS**

**WHEREAS**, on March 17, 2010, the School District of Palm Beach County (“School District”), issued *Invitation to Bid T/C Playground Equipment, Surfacing & Shade Structures & Fitness Trails 10C-54B*, seeking competitive bids to secure firm discounts and establish a term contract to furnish and install playground equipment, surfacing and shade structures, outdoor fitness equipment and fitness trails, in accordance with the specifications, terms and conditions contained in the IFB (“Services”); and

**WHEREAS**, Contractor submitted a bid in response to the IFB, and was competitively selected as having established the rates, qualifications, and references most advantageous to the School District; and

**WHEREAS**, on May 12, 2010, the School District issued a Letter of Agreement to Contractor announcing the selection of Contractor and award for Services to be performed throughout the jurisdictional area of the School District, subject to compliance with IFB conditions and all pertinent laws of the State of Florida; and

**WHEREAS**, City administration has identified the need for Services at the Claude Pepper Park, situated at 1255 NW 135<sup>th</sup> Street (“Park”); and

**WHEREAS**, on October 23, 2007, the Mayor and City Council of the City of North Miami, adopted Ordinance 1244, which authorizes the City Manager to approve the purchase of supplies, goods and/or services from current contracts of other governmental entities (“piggyback”), such as the School District; and

**WHEREAS**, Contractor is willing to provide Services to the City at the same favorable terms, conditions and rates extended to the School District; and

**WHEREAS**, the City Manager finds the expedient and cost-savings procurement of Services, to be furnished at the Park for the benefit of the public, is in the best interest of the City.

**NOW THEREFORE**, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

**ARTICLE 1 - RECITALS**

1.1 The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

**ARTICLE 2 - CONTRACT DOCUMENTS**

2.1 The following documents, collectively referred to as the "Contract Documents", are incorporated into and made part of this Agreement:

2.1.1 School District's *Invitation to Bid T/C Playground Equipment, Surfacing & Shade Structures & Fitness Trails 10C-54B* ("IFB"), attached hereto as Exhibit "A";

2.1.2 Contractor's response to School District's IFB ("Bid"), attached hereto as Exhibit "B";

2.1.3 School District's Letter of Contract issued to Contractor on May 12, 2010, for the provision of Services pursuant to IFB requirements, attached hereto as "Exhibit C";

2.1.4 Contractor's Quote No. 030915 issued to the City on March 9, 2015, included in Scope of Services with site plan, attached hereto as "Exhibit D"; and

2.1.5 Any additional documents which are required to be submitted by Contractor in the provision of Services.

**ARTICLE 3 - TERM OF AGREEMENT**

3.1 Subject to authorized adjustments, the Term of this Agreement shall be the period commencing April 1, 2015 through May 31, 2015. This Term of Agreement may be extended in writing with the mutual consent of the Parties.

3.2 Contractor agrees that Services, as set forth in Article 4 below and elsewhere in the Contract Documents, shall be rendered to the City on schedule, diligently and uninterrupted, in accordance with the Contract Documents. Contractor shall be required to show just cause for delays or for additional time requests. Failure to achieve timely Services shall be regarded as a breach of this Agreement and subject to the appropriate remedies available at law.

3.3 When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform Services or any portion thereof, the City may request that Contractor, within a reasonable time frame set forth in the City's request, provide adequate assurances to the City in writing, of Contractor's ability to perform in accordance with terms of this Agreement. In the event that Contractor fails to provide City the requested assurances within the prescribed time frame, the City may treat such failure as a repudiation or breach of this Agreement, and resort to any remedy for breach provided for in this Agreement or at law.

3.4 Minor adjustments to the Term of Agreement which are approved in writing by the City in advance, shall not constitute non-performance by Contractor. Any impact on the Term of

Agreement shall be determined and the time schedule for completion of Services will be modified accordingly.

3.5 Notwithstanding the provisions of this Article 3, this Agreement may be terminated by the City Manager at any time, with or without cause pursuant to Article 7.

**ARTICLE 4 – SCOPE OF SERVICES, CONTRACTOR’S RESPONSIBILITIES**

4.1 Contractor shall provide Services in accordance with the specifications, terms and conditions contained in the Contract Documents, and render full and prompt cooperation with the City in all aspects of Contractor’s performance of Services including, but not limited to, the delivery and installation of:

4.1.1 Two (2) arm and leg press combination fitness apparatus with custom surface mounts (80-50472).

4.1.2 Two (2) elliptical fitness apparatus with custom surface mounts (44989).

4.1.3 Two (2) pull up dip combination with custom surface mounts (48955).

4.1.4 One (1) compound push up with custom surface mount (48941).

4.1.5 One (1) knee raise dip combination with custom surface mount (50422).

4.1.6 Two (2) fitness information boards with custom surface mounts (50497).

4.1.7 One (1) fitness instructions sign with custom surface mount (50507).

4.1.8 The installation of at least One Thousand Five Hundred (1,500) linear feet of Americans with Disabilities Act (ADA) compliant concrete fitness trail.

4.1.9 Provide all other related items and corresponding services to the City as required by Contract Documents.

4.2 Contractor agrees that it will exert every reasonable and diligent effort to ensure that all labor and services employed by Contractor, including that of its subcontractors (if any), shall be in accordance with the Contract Documents and shall incorporate the requirements set forth by applicable rules, regulations, codes and statutes of federal, state and local government jurisdictions.

4.3 Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of Services under this Agreement. All things not expressly mentioned in this Agreement but necessary in carrying out its intent are required by this Agreement, and Contractor shall perform the same as though they were specifically mentioned, described and delineated herein.

4.4 Contractor shall provide and pay for all labor, supervision, materials, equipment, tools, supplies, services and expertise necessary for the proper execution and completion of Services, in accordance with the specifications, terms and conditions contained in the Contract Documents.

4.5 Contractor shall perform the Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession. Additionally, Services shall be accomplished to the satisfaction of the City Manager or his designee.

4.6 Unless otherwise provided for in the Contract Documents, Contractor warrants that all Services which may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied by Contractor at its own cost, whether or not specifically called for.

4.7 Contractor shall be responsible to the City for the acts and omissions of the Contractor's employees, subcontractors and their agents and their employees, and other persons performing portions of the Services (if any) on behalf of Contractor.

4.8 Contractor represents and warrants to the City that: (i) Contractor possesses all qualifications, licenses and expertise required in the provision of Services, with personnel fully licensed by the State of Florida; (ii) Contractor is not delinquent in the payment of any sums due the City, including payment of permit fees, local business taxes, or in the performance of any obligations to the City; (iii) all personnel assigned to perform work shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; (iv) the Services will be performed in the manner as described in the Contract Documents for the budgeted amounts, rates and schedules; and (v) the person executing this Agreement on behalf of Contractor is duly authorized to execute same and fully bind Contractor as a Party to this Agreement.

4.9 Contractor agrees and understands that: (i) any and all subcontractors used by Contractor shall be paid by Contractor and not paid directly by the City; and (ii) any and all liabilities regarding payment to, or use of subcontractors for any of the work related to this Agreement, shall be borne solely by Contractor.

4.10 The City shall make decisions on all claims regarding interpretation of the Agreement and on all other matters relating to the execution, progress and quality of the Services.

4.11 Contractor accepts, understands and agrees that these provisions of the Agreement constitute a material inducement for the City to enter into this Agreement and that the City has indeed relied on these particular provisions in making its decision to enter into this Agreement with Contractor.

#### **ARTICLE 5 - MODIFICATION TO SCOPE OF SERVICES**

5.1 The City reserves the right to make changes to the Scope of Services, including alterations, reductions, or additions thereto. Upon receipt by Contractor of City's notification of a contemplated change, the Contractor shall, in writing:

5.1.1 Provide a detailed estimate for the increase or decrease in cost due to the contemplated change;

5.1.2 Notify the City of any estimated change in the completion date, as specified in the Term of Agreement; and

5.1.3 Advise the City if the contemplated change shall affect the Contractor's ability to meet the completion dates or schedules of this Agreement.

5.2 If the City so instructs in writing, Contractor shall suspend work on that portion of the Scope of Services affected by a contemplated change pending the City's decision to proceed with the change.

5.3 If the City elects to make the change, the City shall initiate an Amendment to Agreement and the Contractor shall not commence work on any such change until the Contractor signs such written amendment approved and executed by the City.

#### **ARTICLE 6 - COMPENSATION**

6.1 Contractor shall be paid an amount not to exceed Fifty Two Thousand Nine Hundred Ninety Five Dollars (\$52,995.00) as full compensation for Services rendered in accordance with Contract Documents.

6.2 The City shall pay Contractor within forty-five (45) days of receipt of invoice the total shown to be due on such invoice, provided the City has accepted the Services.

6.4 Funding for this Agreement is contingent on the availability of funds and the Agreement is subject to amendment or termination due to lack of funds or a reduction of funds, upon ten (10) days written notice to Contractor.

#### **ARTICLE 7 - CITY'S TERMINATION RIGHTS**

7.1 The City Manager shall have the right to terminate this Agreement, in his sole discretion at any time, with or without cause, upon ten (10) days written notice to Contractor. In such event, the City shall pay Contractor compensation for Services rendered prior to the effective date of termination. The City shall not be liable to Contractor for any additional compensation, or for any consequential or incidental damages.

#### **ARTICLE 8 - INDEPENDENT CONTRACTOR**

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

#### **ARTICLE 9 - CONFLICTS OF INTEREST**

9.1 The Contractor represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has

not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

9.2 Contractor covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interest, directly or indirectly with Contractor. Contractor further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

**ARTICLE 10 - DEFAULT**

10.1 If Contractor fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Contractor shall be in default. The City shall have the right to terminate this Agreement, in the event Contractor fails to cure a default within ten (10) business days after receiving Notice of Default. Contractor understands and agrees that termination of this Agreement under this section shall not release Contractor from any obligations accruing prior to the effective date of termination.

**ARTICLE 11- NOTICES**

11.1 All notices, demands, correspondence and communications between the City and Contractor shall be deemed sufficiently given under the terms of this Agreement when delivered by personal service, faxed, or dispatched by mail or certified mail, addressed as follows:

To Contractor: Superior Park Systems, Inc.  
Attn: Mitchell Leitner  
1418 Scott Street  
Hollywood, FL 33020  
Phone: (954) 920-3352  
Email: [Mitch@superiorparksystems.com](mailto:Mitch@superiorparksystems.com)

To City: City of North Miami  
Attn: City Manager  
776 N.E. 125<sup>th</sup> Street  
North Miami, Florida 33161

With a copy to: City Attorney  
City of North Miami  
776 N.E. 125<sup>th</sup> Street  
North Miami, Florida 33161

11.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

11.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

**ARTICLE 12 - PUBLIC RECORDS**

12.1 Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 119, Florida Statutes (2014), and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law.

12.2 The Contractor shall additionally comply with the provisions of Section 119.0701, Florida Statutes (2014), entitled "Contracts; public records".

**ARTICLE 13 - INDEMNIFICATION**

13.1 Contractor shall defend, indemnify and hold harmless the City, its officers and employees from and against any and all claims, costs, losses and damages including, but not limited to reasonable attorney's fees, caused by the negligent acts or omissions of the Contractor, its officers, directors, agents, partners, subcontractors, employees and managers in the performance of the Services under this Agreement.

13.2 The Contractor shall be fully responsible to City for all acts and omissions of the Contractor, its employees, subcontractors, suppliers, or other persons directly or indirectly employed by its subcontractors or suppliers, and any other persons or organizations performing or furnishing supplies under a direct or indirect agreement with Contractor. Nothing in the Contract Documents shall create any contractual relationship between City and any such subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of City to pay or to cause the payment of any money due any subcontractor, supplier, employee or agent except as may otherwise be required by law.

13.3 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes (2014). Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

**ARTICLE 14 - INSURANCE**

14.1 Prior to commencing Services, the Contractor shall submit certificates of insurance evidencing the required coverage under the Contract Documents and specifically providing that the City is an additional named insured with respect to the required coverage and the operations of the Contractor under this Agreement. Contractor shall not commence Services under this Agreement until after Contractor has obtained all of the minimum insurance described and the policies of such insurance detailing the provisions of coverage have been received and approved by the City.

14.2 Contractor shall not permit any subcontractor to begin work until after similar minimum insurance to cover subcontractor has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, Contractor shall furnish, at least thirty (30) calendar days prior to expiration of the date of the insurance, a renewed certificate of insurance as proof that equal and like coverage and extension is in effect. Contractor shall not continue to perform the Services required by this Agreement unless all required insurance remains in full force and effect.

14.3 All insurance policies required of the Contractor shall be written by a company with a Best's rating of B+ or better and duly authorized and licensed to do business in the State of Florida and be executed by duly licensed managers upon whom service of process may be made in Miami-Dade County, Florida. The City may accept coverage with carriers having lower Best's ratings upon review of financial information concerning Contractor and the insurance carrier.

**ARTICLE 15 - FORCE MAJEURE**

15.1 A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation pursuant to or required by the Agreement by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such Party is actually delayed by such Force Majeure Event. The Party seeking delay in performance shall give notice to the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.

**ARTICLE 16 - MISCELLANEOUS PROVISIONS**

16.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

16.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

16.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

16.4 Services shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the City.

16.5 The City is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.

16.6 This Agreement constitutes the sole and entire agreement between the Parties. No modification or amendments hereto shall be binding on either Party unless in writing and signed by both Parties.

16.7 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

16.8 The City reserves the right to audit the records of the Contractor covered by this Agreement at any time during the provision of Services and for a period of three years after final payment is made under this Agreement.

16.9 The Contractor agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

16.10 The professional Services to be provided by Contractor pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.

16.11 This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

16.12 The Contractor agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

16.13 All other terms and conditions set forth in the Contract Documents which have not been modified by this Agreement, shall remain in full force and effect.

16.14 In the event of any dispute arising under or related to this Agreement, the prevailing Party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

16.15 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:

Superior Park Systems, Inc., a Florida for-profit corporation,

Corporate Secretary or Witness:

"Contractor":

By: [Signature]

By: [Signature]

Print Name: TEODIE BOWEN

Print Name: Mitchell Leitner

Title: SECRETARY

Title: President

Date: 4/14/15

Date: 4/14/15

ATTEST:

City of North Miami, a Florida municipal corporation, "City":

DocuSigned by: [Signature]  
By: Michael A. Etienne  
City Clerk

DocuSigned by: [Signature]  
By: Aleem Ghany  
City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

DocuSigned by: Regine Monestime 4/21/2015  
By: Regine M. Monestime  
City Attorney