



SALES AGREEMENT

This Sales Agreement ("Agreement") is entered into by and between QR FIT Trail ("Company") and Hidalgo County Human Services, as signed below ("Customer").

1. Sale of Equipment. Customer hereby agrees to purchase from Company the equipment (the "Equipment") set forth on the attached Purchase Order. Customer shall own the Equipment upon purchase.

2. Price. The price and time for payment for the Equipment is as set forth on the attached Purchase Order. Sales are made on an annual subscription basis (\$200/year), and all fees are due at the beginning of the annual period. Upon payment of the annual subscription fee, Customer will have access to periodically-refreshed video footage and quarterly usage reports. *Any amounts payable by Customer hereunder which remain unpaid after the due date shall be subject to a late charge equal to 10% of the purchase price per month from the due date until such amount is paid.*

3. Delivery. Company shall use its reasonable efforts to deliver the Equipment to Customer on the delivery date set forth on the Purchase Order. Delivery shall be made F.O.B. at the desire location. If the delivery is not made within 30 days of the scheduled delivery date, other than because of the fault of Customer or by *force majeure* (as set forth in Section 9(l)), Customer may cancel its purchase of the Equipment. All transportation, shipping and handling charges shall be paid by Customer. Customer bears all risk of loss or damage to the Equipment after delivery to the transportation shipping point.

4. Design and Installation of the Equipment. Customer is responsible for reviewing and approval of the final visual layout of the Equipment before production, and any costs relating to changes requested by Customer to be made to the final design after production will be born solely by Customer. Customer shall be exclusively responsible for installation of the Equipment. Customer shall install the Equipment in a reasonably competent manner. Customer shall comply with all applicable rules, laws, and regulations in connection with installation of the Equipment. Company shall not be responsible for damage done to the Equipment caused by installation by the Customer, or for any violation of rules, laws or regulations by Customer relating to installation.

5. Infringement Indemnity. Company will defend and indemnify Customer against a claim that the Equipment infringes a United States copyright or patent, provided that: (a) Customer notifies Company in writing within 30 days of the claim; (b) Company has sole control of the defense and all related settlement negotiations; and (c) Customer provides Company with the assistance, information and authority necessary to perform Company's obligations under this Section. Reasonable out-of-pocket expenses incurred by Customer in providing such assistance will be reimbursed by Company. Company shall have no liability for any claim of infringement based on use of Equipment altered by Customer. In the event the Equipment is held or is believed by Company to infringe, Company shall have the option, at its expense, to (a) modify the Equipment to be non-infringing; (b) obtain for Customer a license to continue using the Equipment; or (c) refund the fees paid for the Equipment. Customer explicitly agrees that this Section 5 states Company's entire liability and Customer's exclusive remedy for infringement, misappropriation or related claims.

6. Disclaimers and Warranty. (a) Company warrants to the original purchaser of Equipment that for the Warranty Period (as defined below), the Equipment will be free from material defects in materials and workmanship. The foregoing warranty is subject to the proper installation, operation and maintenance of the Equipment in accordance with installation instructions and the operating manual supplied to Customer, as noted in Section 4. Warranty claims must be made by Customer in writing within sixty (60) days of the manifestation of a problem. Company also warrants that, if Company ceases operations or goes out of business, videos will be available for five (5) years after the date operations have ceased. (b) Company warrants Equipment that has not been tampered with by third parties for 60 days from the date of delivery. Company will provide replacement Equipment upon request and upon receipt of the damaged Equipment for a cost to Customer of \$100.00 per sign, and will resurface damaged Equipment upon request and upon receipt of the damaged Equipment for a cost to Customer of \$50.00. (c) Excluded from the warranty are problems due to accidents, misuse, misapplication, storage damage, negligence, or modification to the Equipment or its components. (d) Company does not authorize any person or party to assume or create for it any other obligation or liability in connection with the Equipment except as set forth herein. (e) THE INDEMNITY IN SECTION 5 AND WARRANTY IN SECTION 6(a) ABOVE IS EXCLUSIVE AND IN LIEU OF ALL OTHER INDEMNITIES OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. Nondisclosure. By virtue of this Agreement, Customer may have access to information that is confidential to Company ("Confidential Information"). Confidential Information shall include, but not be limited to, the terms and pricing under this Agreement, the technical and other specifications for the Equipment and all information identified as confidential in the sole and exclusive discretion of the Company. Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of Customer; (b) was in the Customer's lawful possession prior to the disclosure and had not been obtained by Customer either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the Customer by a third party without restriction on disclosure; or (d) is independently developed by Customer. Customer agrees to hold Confidential Information in confidence during the term of this Agreement and for a period of five years after termination of this Agreement. Customer agrees that unless required by law, it shall not make Confidential Information available in any form to any third party or to use Confidential Information for any purpose other than the implementation of this Agreement. Customer agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees, representatives or agents in violation of the terms of this Agreement unless otherwise provided by law.

8. Limitation of Liability. Customer shall indemnify and hold harmless the Company, its parent, subsidiaries, affiliates, successors, assigns, employees, officers, directors, agents, or subcontractors from and against any and all suits, claims,

QR FIT TRAIL

Fitness on your phone

losses, forfeitures, demands, fees, damages, liabilities, costs, expenses, obligations, proceedings, or injuries, of any kind or nature, including reasonable attorney's fees which that Party may hereafter incur, become responsible for, or pay out as a result of injuries of any kind sustained by ultimate users of the equipment to the extent permitted under the Constitution and laws of the Texas. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES INCURRED BY CUSTOMER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, OR TORT, OR OTHERWISE EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY'S LIABILITY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE EQUIPMENT. THE PROVISIONS OF THIS AGREEMENT ALLOCATE THE RISKS BETWEEN COMPANY AND CUSTOMER. COMPANY'S PRICING REFLECTS THIS ALLOCATION OF RISK AND BUT FOR THIS ALLOCATION AND LIMITATION OF LIABILITY, COMPANY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT.

9. Termination. This Agreement is terminable at any time by Customer. No pro-rata or other refunds will be made upon termination. If Customer terminates the Agreement and/or fails to pay the annual subscription fee, Customer shall have access only to archived video footage (and not periodically refreshed video footage) and shall not be provided with quarterly usage reports.

10. Miscellaneous. (a) This Agreement, and all matters arising out of or relating to this Agreement, shall be governed by the laws of the Commonwealth of Virginia (exclusive of conflict of laws principles). (b) All notices, including notices of address change, required to be sent hereunder shall be in writing and shall be deemed to have been given when mailed by first class mail or by fax to the address listed below. (c) Prices for Equipment specified herein are exclusive of all city, state and federal taxes, including, without limitation, taxes on manufacture, sales, receipts, gross income, occupation, use and similar taxes. Customer agrees to pay such taxes directly or to reimburse Company for all such taxes, whether imposed on Customer required to be collected by Company, or imposed on Equipment or on Customer in connection with this sale. Wherever applicable, such tax or taxes shall be added to the invoice as a separate charge on invoiced separately. Customer agrees to pay all personal property taxes that may be levied against Equipment after the date of delivery. (d) To secure payment and performance of all Customer's obligations hereunder, Company hereby retains title to equipment and a security interest therein until payment in full and performance by Customer of all said obligations. When requested by Company, Customer shall duly acknowledge this Agreement, and execute, acknowledge and deliver to Customer, in Company's usual form, a supplement hereto, security agreement, financing statement and other appropriate instruments to constitute Equipment as the unencumbered security for the obligations of Customer hereunder, or to enable Company to comply with all applicable filing or recording laws. (e) In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force. (f) The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. (g) Company is an independent contractor; nothing in this Agreement shall be construed to create a partnership, joint venture or

agency relationship between the parties. (h) This Agreement constitutes the complete agreement between the parties with respect to its subject matter and supersedes all prior or contemporaneous agreements, understandings, representations, discussions, proposals, literature, and the like, written or oral. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party; no other act, document, usage or custom shall be deemed to amend or modify this Agreement. It is expressly agreed that the terms of this Agreement shall supersede the terms in any Customer purchase order or other ordering document, if any. (i) In any proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs incurred. (j) This Agreement shall be construed as to its fair meaning and not strictly for or against either party. (k) Company shall not be deemed to be in default of any provision of this Agreement, or for failures in performance, resulting from acts or events beyond its reasonable control. Such acts shall include but not be limited to acts of God, civil or military authority, civil disturbance, war, strikes, fires, other catastrophes, labor disputes, parts shortages, or other events beyond Company's reasonable control. (l) No action, regardless of form, arising out of this Agreement may be brought by either party more than one year after the cause of action arose, or in the case of non-payment, more than two years from the date of last payment. (m) This Agreement is not assignable, directly or indirectly, by Customer. (n) This Agreement may be executed in counterparts and by scanning and exchange via electronic mail.

FOR COMPANY:

By: Jay Levesque/Kurt Kohls
Title: Co-founders, QR F.I.T. Trail LLC
Address: P.O. Box 3778, Merrifield, VA 22116
Phone: 571.259.4104/571.499.1145
Email: jay.levesque@qrfittrail.com

FOR CUSTOMER:

By: Ramon Garcia
Title: Hidalgo County Judge
Address: 100 East Cano
City, ST, Zip: Edinburg, Texas 78539
Phone: 956-318-2600
Email: ramon.garcia@co.hidalgo.tx.us

Signature: Ramon Garcia

APPROVED BY
COMMISSIONERS' COURT
ON: 11/30/18 ms

Company's Name: QR Fit Trail, LLC

Department: Health Department

Type of AGREEMENT: Sales Agreement


AI- 63501 Approved on C.C. on 01/30/2018

ATTEST:

Hidalgo County Clerk

100 North Closner

Edinburg, Texas 78539



Arturo Guajardo Jr., County Clerk



AI-63501
CC - REGULAR

Purchasing Department 17. B. 1.
Health & Human Services Dept.

Meeting Date: 01/30/2018
Submitted For: Marty Salazar, PURCHASING DEPT.
Submitted By: Hector Garcia, PURCHASING DEPT.
Department: PURCHASING DEPT.

Information

CAPTION

A. Requesting exemption from competitive procurement requirement pursuant to Texas Local Government Code, 262.024 (7) & (A) an item that can only be obtained from one source;

B. Requesting approval of a "Sole Source Declaration" for QR Fit Trail, LLC for the purchase of Quick Response "QR" coded signs, which will provide fitness resources for Hidalgo County residents as way to promote a healthy and active lifestyle to expand the fight against the obesity epidemic with said declaration to in effect for all Hidalgo County Wide departments unless otherwise revoked by commissioners court.

BACKGROUND

Requested by Health & Human Services Department. Req#364967

Fiscal Impact

CALENDAR YEAR: 2018

ACCT. #: 8-1293-441-11-340-070-7-660

FUNDS AVAILABLE Y/N?: Y MATCHING FUNDS Y/N?:

BUDGETARY IMPACT:

Please see Requisition#364967

Attachments

Backup Req#364967

Sole Source Letter & Affidavit

Sole Source Declaration QR Fit Trail. LLC

Form Review

| Inbox | Reviewed By | Date |
|---------------------------------|--------------------|---------------------------------|
| Purchasing - Internal | Marty Salazar | 01/26/2018 05:10 PM |
| Final Approval | Monica Salinas | 01/26/2018 05:31 PM |
| Form Started By: Hector Garcia | | Started On: 01/26/2018 01:18 PM |
| Final Approval Date: 01/26/2018 | | |

17/84

Purchasing Department - Notes: *onaty*

A. FOR ANY CONTRACT(S) AWARDED AND APPROVED UNDER THIS AGENDA, EXECUTED COPIES OF THE CONTRACT(S) WILL BE AVAILABLE ON THE COUNTY INTRA-NET WEBSITE AND WILL BE FORWARDED VIA E-MAIL, FAX OR HAND DELIVERED TO HIDALGO COUNTY AUDITOR'S OFFICE.

B. ANY AND ALL REQUESTS FOR PAYMENT(S) APPROVED WILL BE SUBJECT TO COUNTY AUDITORS PROCESSING PROCEDURES INCLUDING AUTHORITY FOR COUNTY TREASURER TO ISSUE PAYMENT(S)/CHECK(S).

Handwritten initials and checkmarks

A. Hidalgo County

1. AI-63496 A. Requesting exemption from competitive bidding requirements, under Tx LGC Chapter 262.024 (a) (4), a personal service;

B. Acceptance of the proposed scope of services and fee schedule from Sally Gavlik, dba, P/R & S, LLC with authority to enter into a personal services contract and subject to compliance with Form 1295 if and when applicable. *Subj. to funding*

2. AI-63408 a. Requesting exemption from competitive bidding requirements under Texas Local Government Code 262.024 (a) (4), a professional service;
b. Approval of letter of engagement with "The Espinosa Law Firm" for the provision of legal services to the Hidalgo County Civil Service Commission.

3. AI-63490 Acceptance and approval to add the following verbiage to the Pool of Professional Services Statements of Qualifications in connection to the grading and ranking protocol section:

A. Pursuant to Tex. Govt. Code sec. 2254 [Professional Services Procurement Act] the services will be selected on the basis of qualifications and demonstrated competence] and as further detailed in attached documentation [as reviewed and approved by HC DA/Civil Section];

Note: HC Purchasing issued an Extension of Acceptance Date due to an additional Addenda that will be sent to clarify the matter before CC from original acceptance date of Wed., January 24, 2018 for a two [2] weeks to Wed., Feb. 14, 2018.

B. Acceptance and approval of Instructions/Evaluation Memorandum for distribution to evaluation committee members;

1/4 C. Due to some calls for more time to submit SOQs [those firms requesting packets close to original submission deadline], requesting CC discussion and consideration to extend one [1] additional week or more if so desired to attract more participants and give ample time to submit properly. Note: The 2018 Pool becomes effective on March 16, 2018.

B. Health & Human Services:

1. AI-63501 A. Requesting exemption from competitive procurement requirement pursuant to Texas Local Government Code, 262.024 (7) & (A) an item that can only be obtained from one source;

B. Requesting approval of a "Sole Source Declaration" for QR Fit Trail, LLC for the purchase of Quick Response "QR" coded signs, which will provide fitness resources for Hidalgo County residents as way to promote a healthy and active lifestyle to expand the

APPROVED

fight against the obesity epidemic with said declaration to in effect for all Hidalgo County Wide departments unless otherwise revoked by commissioners court.

C. Pct. 2

1. AI-63455 Acceptance and approval to execute the final form of a Professional Surveying Agreement with Quintanilla Headley and Associates for "Road and Bridge, C.I.P., and Other Projects in General (On An As Needed Basis) for Pct 2, [approved for negotiations on CC 01/16/18].

2. AI-63456 Requesting approval of a professional appraisal services agreement with Professional Appraisal Service Inc., for the purposes of appraisal services for: Fair Market Value Appraisals in connection with the Acquisition of Land-Sale and/or Exchange, Rights of Way, Easements, Condemnations and Disposition of County owned Property located within Hidalgo County Precinct No. 2 (on an as needed basis & as selected for negotiations by CC on 1/16/18].

D. Pct. 4

1. AI-63412 A. Requesting approval of "Amendment No. 2" to the AIA B101-2007 Standard Form of Agreement (C-17-184-06-27) with Nassari-Warren Group Architects, Inc. for Project: "The Design and Construction of Memorial Park Phase I" (located at 107 Highway and Sunflower Road, Edinburg, Texas)in Precinct No. 4, to modify/add various section/articles to the AIA in order for project to proceed with a CMAR process, (refer to attached amendment herein).

B. Discussion, consideration, and action to establish the number of an Evaluation Committee, pursuant to Tx.LGC, Ch. 2269.253, [names will be announced/offered by Comm. Joseph Palacios] of the "Committee" that will score/grade/evaluate the participants for the Step 1 and 2 of the RFQ/P process/selection/engagement of a -"Construction Management At Risk (CMAR) for Construction of Memorial Park Phase I" in Hidalgo County Precinct 4, RFQ/P #2018-023-02-07-LHS;

5 Pepe Caso / Valde / Marty / more funding / Budget

E. Colonia Access Program Pct. 3

1. AI-63461 BCAP/PCT.3 Requesting acceptance and approval of Work Authorization No. 3 in connection with Contract# C-CAP-12-168-07-03 with a proposed fee of \$4,411.25 with L&G Engineering, LLC.

F. County Clerk

1. AI-63480 a. Requesting exemption from competitive procurement requirements under the Texas Local Government Code, Section 262.024(a)(7)(a) proprietary software in connection with On-line Research Services for Hidalgo County;

b. Requesting approval of agreement(s) if applicable for "On-line Research Services" with Lexis Nexis including but not limited to the following, Hidalgo County - County Clerk.

18. Open Forum

1 Fern McClary Re: 17B.I.B(app) attending
2 Anaisol Resendiz Re: thanks to Court - city /
spec Dir. - El Milagro health eligibility specialist
for funding in 2017. 1/29/2018