



AGREEMENT BETWEEN
MARGATE COMMUNITY REDEVELOPMENT AGENCY
AND
SPORTS FACILITIES ADVISORY LLC
FOR
MCRA RFP 2016-03 COMMUNITY CENTER FEASIBILITY STUDY

This is an Agreement between the **Margate Community Redevelopment Agency**, a governmental agency in the State of Florida, hereinafter referred to as “**MCRA**”,

AND

Sports Facilities Advisory LLC (SFA), its successors and assigns, hereinafter referred to as “**CONSULTANT**”.

WITNESSETH, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, MCRA and CONSULTANT agree as follows:

ARTICLE I

DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS and IDENTIFICATIONS set forth below are assumed to be true and correct and are agreed upon by the parties.

- 1.1 AGREEMENT: The written agreement between MCRA and CONSULTANT covering the Work to be performed including other Contract Documents that are attached to the Agreement and made a part thereof.
- 1.2 CHANGE ORDER: A written directive issued on or after the effective date of the Agreement by the MCRA ordering an addition, deletion or revision in the Scope of Work or change in the Contract Time or Contract Price.
- 1.3 MCRA: The Margate Community Redevelopment Agency.
- 1.4 MCRA BOARD: The Board of the MCRA of Margate, Florida, with whom CONSULTANT has entered into an Agreement and for whom the Work is to be provided.
- 1.5 CONTRACT ADMINISTRATOR: Whenever the term Contract Administrator is used herein, it is intended to mean the MCRA Executive Director. In the administration of the contract, as contrasted with matters of policy, all parties may rely upon instructions made by the Contract Administrator.
- 1.6 CONSULTANT: The person, firm, corporation or other entity that enters into an Agreement with the MCRA to perform the Work for the Project.
- 1.7 Sports Facilities Advisory (SFA), LLC is the CONSULTANT selected to perform this Agreement.
- 1.8 NOTICE TO PROCEED: A written Notice given by the MCRA to CONSULTANT fixing the date on which the Contract Time will commence to run and on which CONSULTANT shall start to perform CONSULTANT'S obligations under the Contract Documents.
- 1.9 PROJECT: Refer to MCRA RFP 2016-03 Community Center Feasibility Study.

ARTICLE 2

PREAMBLE

In order to establish background, context and frame of reference for this Agreement and to generally express the objectives and intentions of the respective parties herein, the following statements, representatives and explanations are to be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1 MCRA has secured funding through the approval of its annual operating budget for Work to be performed under this Agreement.
- 2.2 Negotiations pertaining to the services to be performed by the CONSULTANT were undertaken between the CONSULTANT and members of the Selection Committee and staff, and this Agreement incorporates the results of such negotiations.

ARTICLE 3

SCOPE OF SERVICES

- 3.1 To conduct a program analysis and feasibility study of a proposed Community Center for the City Center project for the MCRA as per the terms and conditions of RFP 2016-03 – Community Center Feasibility Study (Exhibit “A”), and CONSULTANT’S Response to RFP 2016-03 – Community Center Feasibility Study by SFA/SFM (in particular Sections 2 and 3) and including any negotiated amendments, modifications or supplements.
- 3.2 Refer to EXHIBIT “B” for the TIMELINE, which includes a description of the tasks and schedule breakdown. Prior to beginning the performance of any services under this Agreement, CONSULTANT must receive a written Notice to Proceed or Purchase Order from the MCRA. Prior to proceeding with each Step identified on Exhibit “B”, CONSULTANT must receive written authorization from the Contract Administrator, who may at his/her sole option require the CONSULTANT to submit documents for review and/or approval.
- 3.3 The CONSULTANT shall keep the MCRA updated during the course of the project. CONSULTANT shall be available to meet with staff at mutually agreed upon times to discuss the project and address any concerns or questions regarding the Work.

ARTICLE 4

TIME FOR PERFORMANCE

- 4.1 The CONSULTANT shall perform the services described in the contract documents based on the timeframes agreed upon for each phase of the project (EXHIBIT "B").
- 4.2 In the event CONSULTANT is unable to complete the above services because of delays resulting from untimely review and approval by the MCRA or other governmental authorities having jurisdiction over the Project, and such delays are not the fault of the CONSULTANT, MCRA may grant a reasonable extension of time for the completion of work. It shall be the responsibility of the CONSULTANT to notify the MCRA promptly in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and to inform the MCRA of all facts and details related to the delay.

ARTICLE 5

COMPENSATION AND METHOD OF PAYMENT

- 5.1 MCRA agrees to pay CONSULTANT as compensation for its services under the terms of this Agreement the amounts outlined in the Pricing Proposal provided in EXHIBIT "B". Detailed invoices must be provided for any reimbursable expenses.
- 5.2 Any additional services not included in the attached scope shall be negotiated and agreed upon between the MCRA and CONSULTANT prior to being performed as described in Article 6.
- 5.3 METHOD OF BILLING AND PAYMENT:
 - 5.3.1 CONSULTANT may submit bills at the completion and approval of each phase or task order or for partial completion of each phase on a pro-rata basis. However, requests for payment shall not be made more frequently than a monthly basis.
 - 5.3.2 MCRA agrees that it will make its best efforts to pay CONSULTANT within 30 calendar days of receipt of CONSULTANT'S statement as provided above.
- 5.5 PAYMENT ADDRESS:

Payment will be made to the CONSULTANT at:

Sports Facilities Advisory LLC
600 Cleveland Street, Suite 910
Clearwater, FL 33755

ARTICLE 6

ADDITIONAL SERVICES AND CHANGES IN SCOPE OF WORK

- 6.1 The MCRA, without invalidating this Agreement, may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement. Such changes must be contained in a written amendment, executed by the parties thereto, with the same formality and of equal dignity prior to any deviation from the terms of this Agreement, including the initiation of any extra work.
- 6.2 Additional services beyond the programmed Scope of Work will be either an hourly additional service at a guaranteed maximum cost or lump sum additional service.
- 6.3 The MCRA Board, prior to execution of such work, shall approve all additional services and changes in the Scope of Work.
- 6.4 Notwithstanding the above paragraph, additional services that, individually or when cumulatively added to the amounts authorized pursuant to prior change orders for this project, increase the cost of the work to the MCRA not in excess of ten percent (10%) or \$25,000, whichever is lesser, may be authorized by signed approval of the MCRA Executive Director.
- 6.5 No claim against MCRA for extra work in furtherance of a Change Order shall be allowed unless prior approval pursuant to this Article has been obtained. Unless otherwise provided for, the Contract Price and Contract Time shall be changed only by a Change Order or written amendment approved by the MCRA Board.

ARTICLE 7

MCRA'S RESPONSIBILITIES

- 7.1 Assist CONSULTANT by placing at its disposal all available information pertinent to the "Project", including previous reports and any other data relative to the Project.
- 7.3 Arrange for access to and make all provisions for CONSULTANT to enter upon public and private property as required for CONSULTANT to perform its services.
- 7.4 Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by CONSULTANT, obtain advice of an attorney,

insurance counselor or other consultants as MCRA deems appropriate for such examination, and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of CONSULTANT.

- 7.5 Give prompt written notice to CONSULTANT whenever the MCRA observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT'S services.

ARTICLE 8

MISCELLANEOUS

8.1 OWNERSHIP OF DOCUMENTS:

Drawings, specifications, designs, models, photographs, reports, surveys, and other data provided with this Agreement are and shall remain the property of the MCRA, whether the Project for which they are made is executed or not. However, this is not an assignment of any copyrights or other ownership rights that the CONSULTANT maintains.

Any use for extensions of the project or for any other project without written verification or adaptation by the CONSULTANT for the specific purpose intended will be at the MCRA'S sole risk and without liability or legal exposure to the CONSULTANT.

8.2 TERMINATION:

This Agreement may be terminated by either party for cause, or by the MCRA for convenience, upon 14 calendar days written notice by the terminating party to the other party of such terminations, in which event the CONSULTANT shall be paid its compensation for services performed to the termination date. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CONSULTANT shall become the property of the MCRA and shall be delivered by CONSULTANT to the MCRA upon payment by the MCRA for all services performed by the CONSULTANT.

Upon delivery of such notice by the MCRA to the CONSULTANT, the CONSULTANT shall discontinue all services in connection with the performance of the Agreement, and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to the Agreement.

In the event that the CONSULTANT abandons this Agreement or causes it to be terminated, he shall indemnify the MCRA against all loss pertaining to this termination up to a maximum of 1.3 times the full contract fee amount.

8.3 RECORDS:

- a. CONSULTANT agrees to keep and maintain public records in CONSULTANT's possession or control in connection with CONSULTANT's performance under this Agreement. CONSULTANT additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. CONSULTANT shall 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, and following completion of the Agreement until the records are transferred to the MCRA.
- b. Upon request from the MCRA custodian of public records, CONSULTANT shall provide the MCRA 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 by Chapter 119, Florida Statutes, or as otherwise provided by law.
- c. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the MCRA.
- d. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the CONSULTANT shall be delivered by the CONSULTANT to the MCRA, at no cost to the MCRA, within seven (7) days. All such records stored electronically by CONSULTANT shall be delivered to the MCRA in a format that is compatible with the MCRA's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the CONSULTANT shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- e. Any compensation due to CONSULTANT shall be withheld until all records are received as provided herein.
- f. CONSULTANT's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the MCRA.
- g. CONSULTANT shall keep such records and accounts and require any and all consultants and subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement and expenses for which CONSULTANT expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by MCRA and shall be kept for a period of three years

after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books will be grounds for disallowance by MCRA of any fee or expenses based upon such entries.

8.4 SUBCONTRACTORS:

In the event the CONSULTANT, during the course of the work under this Agreement, requires the services of any subcontractors or other professional associates in connection with services covered by this Agreement, CONSULTANT must secure the prior written approval of the Contract Administrator or designee.

8.5 ASSIGNMENT:

This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT, without the prior written consent of the MCRA; however, the Agreement shall run to the MCRA and its successors.

8.6 **EQUAL OPPORTUNITY EMPLOYMENT:** CONSULTANT agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age or national origin and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age or national origin. This provision shall include but not be limited to employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or their forms of compensation, and selection for training, including apprenticeship.

8.7 INDEMNIFICATION:

8.7.1 CONSULTANT agrees to pay on behalf of and defend MCRA from any loss, cost, or expense claimed by third parties for property damage and bodily injury, including death, caused by the negligence or willful misconduct of CONSULTANT, its employees, or agents including death in connection with services under this Agreement to the scope of Sports Facilities Advisory, LLC insurance protection.

8.7.2 If the negligence or willful misconduct of both the CONSULTANT and MCRA (or a person identified above for whom each is liable) is a cause of such damage or injury, the loss, cost, or expense shall be shared between the CONSULTANT and MCRA as provided by law.

8.7.3 Both parties agree that the MCRA shall pay to the CONSULTANT one hundred dollars (\$100.00) in consideration for the CONSULTANT agreeing to indemnify the MCRA as provided under this contract.

8.7.4 The execution of this Agreement by CONSULTANT shall obligate CONSULTANT to comply with the foregoing indemnification provision, however, the collateral obligation of insuring its indemnity must be complied with as set forth below in Article 8.10.

8.8 INSURANCE:

CONSULTANT shall provide, pay for, and maintain in force at all times during the services to be performed, such insurance, including Worker's Compensation Insurance, Employer's, and Professional Liability Insurance that will assure to MCRA the protection contained in the foregoing indemnification undertaken by CONSULTANT. The Comprehensive General Liability policy shall clearly identify the foregoing indemnification as insured under this section. United States Treasury approved companies authorized to do business in the State of Florida shall issue such policy or policies. CONSULTANT shall specifically name the MCRA as additional insured under the Comprehensive General Liability insurance policy hereinafter described and shall promptly provide all required endorsements.

The Professional Liability policy or certificate shall reference this project by endorsement.

- (a) Professional Liability Insurance: The limits of liability provided by such policy shall be no less than five hundred thousand dollars (\$500,000) to assure the MCRA the indemnification specified in Article 8.8.
- (b) Worker's Compensation Insurance to apply for all employees in compliance with the "Worker's Compensation Law" of the State of Florida and all applicable Federal laws. In addition, the policy must include:

Employers Liability with a limit of \$100,000 each accident.

Notice of Cancellation and/or Restriction - The policy must be endorsed to provide the MCRA with 30 days notice of cancellation and/or restriction.

- (c) Comprehensive General Liability with minimum limits of \$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 Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

Premises and/or Operations

Independent Contractors

Broad Form Property Damage

Broad Form Contractual Coverage applicable to this specific Agreement including any hold harmless and/or indemnification agreement.

Personal Injury Coverage with Employee and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

The City of Margate and the Margate Community Redevelopment Agency are to be included as "Additional Insured" with respect to liability arising out of operations performed for MCRA by or on behalf of CONSULTANT or acts or omissions of CONSULTANT in connection with such operation, and CONSULTANT shall promptly provide all required endorsements.

Notice of Cancellation and/or Restriction - The policy must be endorsed to provide MCRA with 30 days' notice of cancellation and/or restriction.

- (d) Business Automobile Liability with minimum limits of \$1,000,000 per Occurrence combines 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 and must include:

- Owned vehicles

- Hired and non-owned vehicles

- Employer's non-ownership

Notice of Cancellation and/or Restriction - The policy must be endorsed to provide MCRA with 30 days' notice of cancellation and/or restriction.

- (e) CONSULTANT shall provide to the MCRA a Certificate of Insurance or a copy of all insurance policies required by Article 8.8 including any subsection hereunder. The MCRA reserves the right to require a certified copy of such policies upon request. All endorsements and certificates shall state that MCRA shall be given 30 days' notice prior to expiration or cancellation of the policy.

8.9 REPRESENTATION:

- 8.9.1 It is recognized that questions in the day-to-day conduct of the Project will arise. The MCRA Executive Director or an appointed designee shall act as the MCRA'S representative/agent to whom all communication on the day-to-day conduct of the Project shall be addressed.
- 8.9.2 CONSULTANT shall inform the MCRA Executive Director or her designee in writing of the representative of CONSULTANT to whom matters involving the conduct of the Project shall be addressed.

8.10 ATTORNEYS FEES, JURISDICTION AND VENUE:

- 8.10.1 If the MCRA incurs any expense in enforcing the terms of this Agreement whether suit be brought or not, CONSULTANT agrees to pay all such costs and expenses including but not limited to court costs, interest, and reasonable attorney's fees if such claim is a result of an error or omission within the CONSULTANT'S work.
- 8.10.2 The laws of the State of Florida shall govern the validity of this Agreement, its interpretation and performance and any other claims related to it. Venue shall be deemed to be agreed between the parties as to the Circuit Court in and for the Seventeenth Judicial Circuit in Broward County, Florida.
- 8.10.3 **Waiver of Jury Trial - MCRA and CONSULTANT hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action, proceeding, lawsuit or counterclaim based upon the contract, arising out of, under, or in connection with the performance of the work, or any course of conduct, course of dealing, statements (whether verbal or written) or the actions or inactions of any party.**

8.11 ALL PRIOR AGREEMENTS:

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

It is further agreed that no modifications, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in written document executed with the same formality and of equal dignity herewith.

8.12 NOTICES

Whenever either party, desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

FOR MCRA:

Diane Colonna
Executive Director
Margate CRA
5790 Margate Boulevard
Margate, FL 33063

FOR CONSULTANT:

Eric Sullivan
SFA, LLC
600 Cleveland Street
Clearwater, FL 33755

8.13 NON-COLLUSION STATEMENT

By executing this Agreement, CONSULTANT affirms that this Agreement is without previous understanding, agreement, or connection with any person, business, or corporation submitting a proposal for the same materials, supplies, service, or equipment, and that this Agreement is in all respects fair, and without collusion or fraud.

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: the MCRA, through its Board and signing by and through its Chair, and Sports Facilities Advisory LLC, signing by and through its duly authorized representative to execute same.

MCRA OF MARGATE

Frank Talerico, Chair

Diane Colonna, MCRA Exec Director

____ day of _____, 2016

____ day of _____, 2016

ATTEST:

APPROVED AS TO FORM:

Courtney Easley, MCRA Coordinator

Douglas R. Gonzales, MCRA Attorney

____ day of _____, 2016

____ day of _____, 2016

FOR CONSULTANT: SPORTS FACILITIES ADVISORY (SFA), LLC

President

____ day of _____ 2016

(CORPORATE SEAL)

Secretary

____ day of _____ 2016

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COMMUNITY CENTER FEASIBILITY STUDY