



## **AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between:

MARGATE COMMUNITY REDEVELOPMENT AGENCY, FLORIDA, A DEPENDENT DISTRICT of the City of Margate, authorized to do business in the State of Florida, 5790 Margate Blvd., Margate, Florida, 33063, (hereinafter referred to as "**MCRA**"); and REP Services, Inc., 581 Technology Park, STE 1009, Lake Mary, FL 32746-7127 (hereinafter referred to as "CONTRACTOR").

WHEREAS, CONTRACTOR in response to a public, competitive bid process prepared and issued by the Clay County Board of County Commissioners, pursuant to Request For Proposal (RFP) No. 13/14-8, submitted a response to provide parks and recreation playground equipment, poured in place surfacing, shades, grass and other park amenities; and

WHEREAS, based on CONTRACTOR's response, the Clay County Board of County Commissioners awarded the RFP to CONTRACTOR on or about February 11, 2014, for a three (3) year term; and

WHEREAS, the MARGATE COMMUNITY REDEVELOPMENT AGENCY (MCRA) evaluated the Clay County RFP process and found it meets the requirements of the competitive bid process; and

WHEREAS, the MARGATE COMMUNITY REDEVELOPMENT AGENCY desires to utilize the Clay County Board of County Commissioners RFP award to CONTRACTOR and to enter into this agreement in accordance with MCRA/CITY'S procurement policy; and

WHEREAS, CONTRACTOR desires to enter into an agreement with the MCRA based on the terms and conditions of the Clay County Board of County Commissioners RFP award dated February 11, 2014.

## **WITNESSETH:**

IN CONSIDERATION of the mutual covenants and conditions as herein expressed and of the faithful performance of all such covenants and conditions, the parties do mutually agree to enter into an agreement for playground equipment, poured in place safety surfacing and installation, as more fully described in Proposal 12041.04 which is attached hereto as Exhibit "A", and incorporated herein by reference.

### **ARTICLE I**

#### **THE AGREEMENT DOCUMENTS**

- 1.1 The AGREEMENT Documents consist of all of the following: (i). Proposal 12041.04 attached hereto as Exhibit "A"; and (iii) CONTRACTOR'S, Certificate of Insurance attached hereto as Exhibit "B", and copy of Clay County Board of County Commissioners RFP No. 13/14-8 award attached hereto as Exhibit "C".
- 1.2 Any and all amendments, modifications and supplements issued on or after the effective date of the AGREEMENT, shall also become part of this AGREEMENT.

### **ARTICLE 2**

#### **SCOPE OF SERVICES**

- 2.1 CONTRACTOR shall furnish all of the labor, materials, equipment, machinery, tools, transportation, supplies and services necessary to perform all of the work required by the AGREEMENT for labor, installation, playground equipment and poured playground surfacing as provided in Proposal No. 12041.04 attached hereto as Exhibit "A" and in an amount not to exceed Two Hundred Eighty Thousand Five Hundred Seven Dollars and 46/100 (\$280,507.46).

### **ARTICLE 3**

#### **TIME OF PERFORMANCE**

- 3.1 This AGREEMENT is to become effective upon execution by both parties and shall

remain in effect until June 2, 2017 for work to be performed under this AGREEMENT.

- 3.2 The delivery of a fully executed copy of this AGREEMENT shall serve as CONTRACTOR'S Notice to Proceed to commence work pursuant to this AGREEMENT.
- 3.3 TIME IS OF THE ESSENCE OF THIS AGREEMENT. The CONTRACTOR shall perform the Services in accordance with the time frames set forth in this AGREEMENT.

#### **ARTICLE 4**

##### **COMPENSATION AND METHOD OF PAYMENT**

- 4.1 The CONTRACTOR shall submit invoices for payment pursuant to the payment schedule contained in Exhibit "A".
- 4.2 All invoicing of reimbursable expenses shall include a detailed statement of such expenses, documented by paid receipts or other evidence of payment.
- 4.3 No work shall be invoiced at rates above those shown in Exhibit "A" without the prior written approval of the CONTRACT ADMINISTRATOR, which approval may be withheld in MCRA's sole discretion, subject to the provisions of paragraph 4.7 hereof.
- 4.4 Payments shall be made upon MCRA'S determination that the invoiced portions of the work have been successfully completed and duly authorized. MCRA shall not be responsible for payment for any work not authorized in writing by the CONTRACT ADMINISTRATOR.
- 4.5 MCRA shall make payment to CONTRACTOR within 30 calendar days of invoice approval.
- 4.6 Payment will be made to CONTRACTOR at:

REP Services, Inc.  
581 Technology Park, STE 1009  
Lake Mary, FL 32746-7127

## **ARTICLE 5**

### **ADDITIONAL SERVICES AND CHANGES IN SCOPE OF WORK**

- 5.1 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.
- 5.2 The MCRA Board, prior to execution of such work, shall approve all amendments to this Agreement. Notwithstanding the foregoing, amendments which, individually or when cumulatively added to the amounts authorized pursuant to prior amendments to the AGREEMENT, do not increase the cost of the work to the MCRA in excess of ten percent (10%) or \$25,000, whichever is less, may be approved by signed approval of the Executive Director of the MCRA.
- 5.3 The compensation and time of performance under this AGREEMENT shall be changed only by written amendment executed by MCRA and CONTRACTOR.

## **ARTICLE 6**

### **MCRA'S OBLIGATIONS**

- 6.1 Furnish to CONTRACTOR, when available, such data as required for performance of CONTRACTOR's Scope of Services.
- 6.2 Arrange for access to and make all provisions for CONTRACTOR to enter upon public and private property as required for CONTRACTOR to perform its services.
- 6.3 Give notice to CONTRACTOR whenever the MCRA observes or otherwise becomes aware of any development that affects the scope or timing of CONTRACTOR'S services.

## **ARTICLE 7**

### **MISCELLANEOUS PROVISIONS**

#### **7.1 Payment and Performance Bond**

- (a) The CONTRACTOR shall be required, before commencing the Scope of Work, to execute and record in the public records of Broward County, a payment and performance bond (the "Bond") with a surety insurer authorized to do business in this state as surety.
- (b) The Bond must state on its front page:
  - 1. The name, principal business address, and phone number of the contractor, the surety, the MCRA, and the City of Margate.
  - 2. The contract number assigned by the MCRA.
  - 3. The bond number assigned by the surety.
  - 4. A description of the project sufficient to identify it, such as a legal description or the street address of the property being improved, and a general description of the improvement.
- (c) Before commencing the Scope of Work or before recommencing the work after a default or abandonment, the CONTRACTOR shall provide to the MCRA a certified copy of the recorded Bond. Notwithstanding the terms of this AGREEMENT, or any other law governing prompt payment for construction services, the MCRA may not make a payment to the CONTRACTOR until the CONTRACTOR has complied with this paragraph.
- (d) The Bond shall be conditioned upon the CONTRACTOR's performance of the Scope of Work in the time and manner prescribed in the AGREEMENT, and promptly making payments to all persons defined in Section 713.01, Florida Statutes, who furnish labor, services, or materials for the prosecution of the Scope of Work provided for in the AGREEMENT.
- (e) The MCRA reserves the right to approve the form of the Bond and the qualifications of the surety prior to the CONTRACTOR recording the Bond in the Broward County public records.

#### **7.2 This AGREEMENT shall have been deemed to have been executed within the State of Florida. The validity, construction, and effect of this AGREEMENT shall be governed by the laws of the State of Florida. Any claim, objection or dispute arising out of this AGREEMENT shall be litigated in the Seventeenth Judicial Circuit in and for Broward County, Florida.**

- 7.3. Should any part, term or provision of this AGREEMENT be determined by the courts to be invalid, illegal or in conflict with any law of the State, the validity of the remaining portion or provision shall not be affected thereby.
- 7.4. CONTRACTOR shall not assign or transfer the AGREEMENT or its rights, title or interests therein without MCRA'S prior written approval. The obligations undertaken by CONTRACTOR pursuant to the AGREEMENT shall not be delegated or assigned to any other person or firm unless MCRA shall first consent in writing to the assignment.
- 7.5. This AGREEMENT, and attachments, represents the entire understanding of the parties as to the matters contained herein. No prior oral or written understanding shall be of any force and effect with respect to those matters covered hereunder. This AGREEMENT may only be modified by amendment in writing signed by each party.
- 7.6. **MCRA AND CONTRACTOR 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 AGREEMENT, ARISING OUT OF, UNDER, OR IN CONNECTION WITH THE WORK, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR THE ACTIONS OR INACTIONS OF ANY PARTY.**
- 7.7. If the MCRA incurs any expense in enforcing the terms of this AGREEMENT whether suit be brought or not, CONTRACTOR 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 CONTRACTOR'S work.
- 7.8. This AGREEMENT may be terminated by either party for cause, or by the MCRA by convenience, upon thirty (30) days written notice by the terminating party to the other party of such termination in which event the CONTRACTOR shall be paid its compensation for services performed to the termination date including all reimbursable expenses then due or incurred to such date of termination. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CONTRACTOR shall become the property of the MCRA and shall be delivered by CONTRACTOR to the MCRA upon payment by the MCRA for all services performed by the CONTRACTOR.
- 7.9. Drawings, specifications, designs, models, photographs, reports, surveys, and other data provided under 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 CONTRACTOR maintains.

- 7.10 CONTRACTOR shall keep such records and accounts and require any and all consultants and sub-contractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours and any expenses charged pursuant to this AGREEMENT. Such books and records will be available at all reasonable times for examination and audit by the MCRA and shall be kept for a period of three (3) years after the completion of all work to be performed pursuant to this AGREEMENT. Incomplete or incorrect entries in such books and records will be grounds for disallowance by MCRA of any fees or expenses based upon such entries.
- 7.11 **EQUAL OPPORTUNITY EMPLOYMENT:** CONTRACTOR 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.
- 7.12 CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR to solicit or secure this AGREEMENT and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this AGREEMENT. For the breach or violation of this provision, the MCRA shall have the right to terminate the AGREEMENT without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.
- 7.13 In the event the CONTRACTOR, 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, CONTRACTOR shall secure the prior written approval of the Contract Administrator or her designee.
- 7.14 **INDEMNIFICATION:**
- (a) CONTRACTOR agrees to pay on behalf of and defend the MCRA from

any loss, cost, or expense claimed by third parties for property damage and bodily injury, including death, caused solely by the negligence or willful misconduct of CONTRACTOR, its employees, or agents including death in connection with services under this AGREEMENT.

- (b) To the extent allowable by law, MCRA agrees to indemnify and defend CONTRACTOR from any loss, cost, or expense claimed by third parties for property damage and bodily injury, including death, caused solely by the negligence or willful misconduct of MCRA, its employees, or agents in connection with the services under this AGREEMENT.
- (c) If the negligence or willful misconduct of both the CONTRACTOR 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 CONTRACTOR and MCRA as provided by law.

7.15 INSURANCE: CONTRACTOR 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. The Commercial General Liability policy shall provide contractual liability coverage as provided by the Standard ISO Policy Form CG 00 01. United States Treasury-approved companies authorized to do business in the State of Florida shall issue such policy or policies. CONTRACTOR shall specifically name the MCRA as additional insured under the Commercial General Liability insurance policy hereinafter described.

- (a) Professional Liability Insurance: The limits of liability provided by such policy shall be no less than \$1,000,000 each claim and annual aggregate.
- (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 thirty days (30 days) notice of cancellation.
- (c) Commercial General Liability with minimum limits of \$1,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability and \$1,000,000 general aggregate. Coverage must be



afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy ISO CG 00 01, without restrictive endorsements, as filed by the Insurance Services Office and must include:

Premises and/or Operations  
Independent Contractors Broad  
Form Property Damage  
Contractual Liability Coverage

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 MCRA and the City of Margate are to be included as "Additional Insured" with respect to liability arising out of operations performed for MCRA by or on behalf of CONTRACTOR or acts or omissions of CONTRACTOR in connection with such operation.

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

- (d) Business Automobile Liability with minimum limits of \$1,000,000 per accident 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 the MCRA with thirty (30) days notice of cancellation.

- (e) CONTRACTOR shall provide to the MCRA a Certificate of Insurance or a copy of all insurance policies required by Article 8.9 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 thirty (30) days' notice prior to expiration or cancellation of the policy.

## 7.16 PUBLIC RECORDS

- (a) **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:**

**Telephone number: (954) 935-5323**  
**E-mail address: cra@margatefl.com**  
**Mailing address: 5790 Margate Blvd**  
**Margate, FL 33063**

- (b) The CONTRACTOR shall comply with public records laws, as follows:
1. Keep and maintain public records required by the MCRA to perform the service.
  2. Upon request from the MCRA's custodian of public records, 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 in this chapter or as otherwise provided by law.
  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 the AGREEMENT term and following completion of the AGREEMENT if the CONTRACTOR does not transfer the records to the MCRA.
  4. Upon completion of the AGREEMENT, transfer, at no cost, to the MCRA all public records in possession of the CONTRACTOR or keep and maintain public records required by the MCRA to perform the service. If the CONTRACTOR transfers all public records to the MCRA 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 MCRA, upon

request from the MCRA's custodian of public records, in a format that is compatible with the information technology systems of the MCRA.

- 7.17 REPRESENTATION: It is recognized that questions in the day-to-day conduct of the work under this AGREEMENT will arise. The CONTRACT ADMINISTRATOR shall act as the MCRA'S representative/agent to whom all communication on the day-to-day conduct under this AGREEMENT shall be addressed. CONTRACTOR shall inform the CONTRACT ADMINISTRATOR in writing of the representative of CONTRACTOR to whom matters involving the conduct of the Project shall be addressed.
- 7.18 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, or electronically with receipt acknowledged, and 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 Community Redevelopment Agency  
5790 Margate Boulevard  
Margate, FL 33063

**FOR CONTRACTOR:**

REP Services, Inc.  
581 Technology Park, STE 1009  
Lake Mary, FL 32746-7127

- 7.19 TRUTH-IN-NEGOTIATION CERTIFICATE: Signature of this AGREEMENT by CONTRACTOR shall act as the execution of a truth-in- negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this AGREEMENT are accurate, complete, and current at the time of contracting. Any additions to the original contract price changed on an hourly price shall be adjusted to exclude any significant sum by which the MCRA determines the additions to the contract price were increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such adjustment shall be made within one year following the end of this

agreement.

IN WITNESSETH WHEREOF, the MCRA and CONTRACTOR have signed this AGREEMENT in duplicate. One counterpart each has been delivered to MCRA and ENGINEER. All portions of the AGREEMENT have been signed or identified by MCRA and CONTRACTOR.

**MARGATE COMMUNITY REDEVELOPMENT AGENCY**

\_\_\_\_\_  
Tommy Ruzzano, Chair

\_\_\_\_ day of \_\_\_\_\_, 2017

\_\_\_\_\_  
Diane Colonna, Executive Director

\_\_\_\_ day of \_\_\_\_\_, 2017

WITNESS:

APPROVED AS TO FORM:

\_\_\_\_\_  
Courtney Easley, CRA Coordinator

\_\_\_\_ day of \_\_\_\_\_, 2017

\_\_\_\_\_  
David N. Tolces, Board Attorney

\_\_\_\_ day of \_\_\_\_\_, 2017

*If not corporation, please provide appropriate signature block.*

**FOR CONTRACTOR**

**FOR CORPORATION:**

\_\_\_\_\_  
**President**

\_\_\_\_ day of \_\_\_\_\_, 2017

**(CORPORATE SEAL)**

\_\_\_\_\_  
**Secretary**

\_\_\_\_ day of \_\_\_\_\_, 2017

**AGREEMENT BETWEEN MARGATE COMMUNITY REDEVELOPMENT AGENCY  
(MCRA) AND REP SERVICE, INC. (CONTRACTOR)**