



## **AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017 ("EFFECTIVE DATE"), 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, 6280 West Atlantic Blvd., Margate, Florida, 33063, (hereinafter referred to as "**MCRA**"); and \_\_\_\_\_ whose address is \_\_\_\_\_ (hereinafter referred to as "**CONTRACTOR**").

### **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 the removal of existing and installation of two, new rooftop packaged air conditioning units at the Margate CRA office building, located at 6280 W. Atlantic Boulevard, Margate, Florida 33063, the proposal for which is attached hereto as Exhibit "A" and made part of this AGREEMENT.

## **ARTICLE I**

### **THE CONTRACT DOCUMENTS**

- 1.1 The Contract Documents consist of this AGREEMENT, together with all of the following: (i) Proposal by \_\_\_\_\_, Inc. dated \_\_\_\_\_ attached hereto as Exhibit "A"; (ii) CONTRACTOR'S, Certificate of Insurance, attached hereto as "Exhibit "B".
- 1.2 Any additional documents which are required to be submitted under the AGREEMENT, and all amendments, modifications, Notice to Proceed, CHANGE ORDERS (as hereinafter defined), and all amendments, modifications and supplements issued on or after the effective date of the AGREEMENT, shall also become part of this AGREEMENT and Contract Documents.

## **ARTICLE 2**

### **SCOPE OF SERVICES**

- 2.1 CONTRACTOR shall furnish all of the labor, materials, tools, equipment, transportation, supplies and other facilities and services necessary for proper execution and completion of all of the work required by the AGREEMENT and Contract Documents ("WORK").
- 2.2 CONTRACTOR shall obtain all permits, testing and engineering required for execution and completion of the WORK.
- 2.3 Upon completion of the WORK, CONTRACTOR shall remove all waste materials, rubbish and debris from the premises and shall leave the property clean and ready for occupancy by MCRA.

## **ARTICLE 3**

### **TIME OF PERFORMANCE**

- 3.1 TIME IS OF THE ESSENCE OF THIS AGREEMENT. The WORK to be performed under this AGREEMENT shall be commenced upon the date specified in the Notice to Proceed and, subject to authorized adjustments, shall be complete within \_\_\_\_\_ calendar days from the Notice to Proceed.

- 3.2 The CONTRACTOR shall perform the WORK as expeditiously as is consistent with reasonable skill and care and the orderly progress of design and construction.
- 3.3 If the CONTRACTOR is delayed in the progress of the Project by acts or neglect of MCRA, MCRA'S employees, separate contractors employed by MCRA, changes ordered in the WORK not caused by the fault of the CONTRACTOR, labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or other causes beyond the CONTRACTOR'S control, the Contract Time shall be reasonably extended by Change Order.

#### **ARTICLE 4**

#### **PAYMENTS**

- 4.1 MCRA shall pay CONTRACTOR in current funds as full compensation for performance of all the WORK subject to additions and deductions by Change Order as provided in this AGREEMENT, the Contract Sum of \$\_\_\_\_\_.
- 4.2 CONTRACTOR shall requisition payments for WORK completed in accordance with the schedule set forth in the proposal Exhibit "A".
- 4.3 MCRA shall make payment to CONTRACTOR within 30 calendar days of approved payment application.
- 4.4 The application for payment shall constitute a representation by the CONTRACTOR to MCRA that, to the best of the CONTRACTOR's knowledge, information and belief, the design and construction have progressed to the point indicated; the quality of the WORK covered by the application is in accordance with the Contract Documents; and the CONTRACTOR is entitled to payment in the amount requested.
- 4.5 Payment will be made to CONTRACTOR at:
- 4.6 The CONTRACTOR warrants that the WORK, materials and equipment covered by previous applications for payment are free and clear of liens, claims, security interests or encumbrances, and that upon request of MCRA, CONTRACTOR shall promptly issue a partial release of lien.
- 4.7 Upon written notice from CONTRACTOR that the entire WORK is complete, including final inspections required by permit, MCRA will make a final inspection

and will notify CONTRACTOR in writing of any portion of the WORK that is incomplete or defective. CONTRACTOR shall immediately remedy such deficiencies.

- 4.8 After CONTRACTOR has completed all corrections to the satisfaction of MCRA and delivered all documentation (such as maintenance and operating instructions, marked up as-built drawings, warranties, etc.) required by the Contract Documents, CONTRACTOR may make application for final payment. The final application shall be accompanied by a final release of lien from CONTRACTOR and subcontractor(s), if any.
- 4.9 MCRA may withhold in whole or in part, payment to such extent as may be necessary to protect itself from loss on account of:
- a. Defective work not remedied.
  - b. Claims filed or reasonable evidence indicating the probable filing of claims by other parties against the CONTRACTOR.
  - c. Failure of the CONTRACTOR to make payment to subcontractors or suppliers for materials or labor.
  - d. Damage to the MCRA or another contractor not remedied.
  - e. Reasonable evidence that the work cannot be completed for the unpaid balance of the Contract Sum.
  - f. Reasonable evidence that the work will not be completed within the Contract Time.
  - g. Persistent failure to carry out the work in accordance with the Contract Documents.

When the above grounds are removed or resolved or the CONTRACTOR provides a surety bond or consent of surety satisfactory to the MCRA which will protect the MCRA in the amount withheld, payment may be made in whole or in part.

- 4.10 The making of final payment shall constitute a waiver of claims by OWNER except those arising from: (i) unsettled liens; (ii) Faulty or defective WORK and latent defects discovered after acceptance; (iii) failure of the WORK to comply with the requirements of the Contract Documents; (iv) terms of special warranties required by the Contract Documents; and (v) any of CONTRACTOR'S continuing obligations under the Contract Documents.

- 4.11 The acceptance of final payment shall constitute a waiver of claims by CONTRACTOR except those previously made in writing and identified by CONTRACTOR as unsettled at the time of final application for payment.

## **ARTICLE 5**

### **CHANGES IN THE SCOPE OF WORK**

- 5.1 The MCRA, without invalidating this Agreement, may request additions, deletions, or revisions to the WORK. Such additions, deletions or revisions shall be authorized by Change Order to written amendment to this AGREEMENT, 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 A Change Order is a written order signed by MCRA and CONTRACTOR, and issued after execution of this Agreement, authorizing a change in the WORK or adjustment in the Contract Sum or Contract Time. The Contract Sum and Contract Time may be changed only by a Change Order.
- 5.3 The cost or credit to MCRA from a change in the WORK shall be determined by mutual agreement.
- 5.4 All Change Orders which, individually or when cumulatively added to amounts authorized pursuant to prior Change Orders for this Project, increase the cost of the WORK to MCRA, must be formally authorized and approved by the MCRA Board prior to their issuance and before WORK may begin.
- 5.5 Notwithstanding the above paragraph, Change Orders which, when cumulatively added to amounts authorized pursuant to this AGREEMENT and prior Change Orders for this Project, do not increase the cost of the WORK by more than \$\_\_\_\_\_ total (10% of original Contract Amount), may be approved by the Executive Director of the MCRA. In addition, Change Orders which modify the time for completion, or which reduce the cost of the WORK, may be approved by the Executive Director of the MCRA.
- 5.6 No claim against OWNER for extra WORK in furtherance of a Change Order shall be allowed unless prior approval pursuant to this Article 5 has been obtained.
- 5.7 Any claim for adjustment in the Contract Price or Time shall be based upon written

notice delivered by the party making the claim to the other party not later than three (3) calendar days after the occurrence or event giving rise to the claims and stating the general nature of the claim. No claim for an adjustment in the Contract Price or an extension of the Contract Time will be valid if not submitted in accordance with this Paragraph.

## **ARTICLE 6**

### **CONTRACTOR'S SERVICES AND RESPONSIBILITIES**

- 6.1 CONTRACTOR shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall be responsible to see that the finished WORK complies accurately with the Contract Documents.
- 6.2 CONTRACTOR warrants that all materials and equipment shall be of good quality and new and that the WORK will be free from defects. CONTRACTOR shall warrant and guarantee all WORK for a minimum of one (1) year from the date of final acceptance by MCRA and provide other warranties as set forth in the Proposal Exhibit "A".
- 6.3 CONTRACTOR is duly licensed to perform commercial air conditioning installations in the State of Florida.
- 6.4 CONTRACTOR has not engaged subcontractor(s) for the performance of any WORK hereunder.
- 6.5 CONTRACTOR shall comply with and give all notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to the performance of the WORK. MCRA shall not be responsible for monitoring CONTRACTOR'S compliance with any laws and regulations. CONTRACTOR shall promptly notify MCRA if the Contract Documents are observed by CONTRACTOR to be at variance therewith.
- 6.6 The risk of loss, injury or destruction shall be with CONTRACTOR until acceptance of the WORK by MCRA. Title to the WORK shall pass to MCRA upon acceptance of the WORK by MCRA
- 6.7 CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the laws and regulations of the State of Florida and its political subdivisions.

## **ARTICLE 7**

### **MCRA'S OBLIGATIONS**

- 7.1 Furnish to CONTRACTOR, when available, such data required for performance of the WORK under the Contract Documents
- 7.2 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.
- 7.3 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.
- 7.4 MCRA may appoint an on-site Project representative to observe the WORK and to have such other responsibilities as the MCRA and CONTRACTOR agree in writing prior to execution of this Agreement
- 7.5 The MCRA shall cooperate with the CONTRACTOR in securing building and other permits, licenses and inspections.
- 7.6 If MCRA observes or otherwise becomes aware of a fault or defect in the WORK or nonconformity with the design or construction documents, the MCRA shall give prompt written notice thereof to the CONTRACTOR.

## **ARTICLE 8**

### **MISCELLANEOUS PROVISIONS**

- 8.1 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.
- 8.2. 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.

- 8.3 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.
- 8.4 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.
- 8.5 **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.**
- 8.6 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.
- 8.7 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.
- 8.8 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.

8.9 *Intentionally Deleted*

8.10 **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.

8.11 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.

8.12 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 MCRA, which approval may be withheld in MCRA's sole discretion.

8.13 **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.

8.14 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 five hundred thousand dollars (\$500,000) 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.

- (d) 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.

8.15 DISPUTES: NOTWITHSTANDING ANY OTHER PROVISIONS PROVIDED IN THIS AGREEMENT, ANY DISPUTE ARISING UNDER THIS AGREEMENT WHICH IS NOT DISPOSED OF BY AGREEMENT SHALL BE DECIDED BY THE EXECUTIVE DIRECTOR OF THE MARGATE COMMUNITY REDEVELOPMENT AGENCY, WHO SHALL REDUCE HIS DECISION IN WRITING AND FURNISH A COPY THEREOF TO THE CONTRACTOR. THE DECISION OF THE EXECUTIVE DIRECTOR OF THE MARGATE COMMUNITY REDEVELOPMENT AGENCY AND THOSE PERSONS TO WHOM HE DELEGATES AUTHORITY TO DECIDE DISPUTES, SHALL BE FINAL AND CONCLUSIVE UNLESS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE FRAUDULENT, CAPRICIOUS, ARBITRARILY, OR GROSSLY ERRONEOUS AS TO BE NECESSARILY IMPLY BAD FAITH, OR NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

8.16 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:**

\_\_\_\_\_, Executive Director  
Margate Community Redevelopment Agency  
6280 W. Atlantic Boulevard  
Margate, FL 33063

**FOR CONTRACTOR:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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.

IN WITNESSETH WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

**MARGATE COMMUNITY REDEVELOPMENT AGENCY**

\_\_\_\_\_  
\_\_\_\_\_, Executive Director

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

WITNESS:

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

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

APPROVED AS TO FORM:

\_\_\_\_\_  
David Tolces, Board Attorney

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

**FOR CONTRACTOR**

**FOR CORPORATION:**

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

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

**(CORPORATE SEAL)**

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

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

**AGREEMENT BETWEEN MARGATE COMMUNITY REDEVELOPMENT AGENCY  
(MCRA) AND \_\_\_\_\_ (CONTRACTOR)**

**EXHIBIT "A"**

**PROPOSAL**

DRAFT

**EXHIBIT “B”**

**Insurance Certificates**

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