



## **AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, 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 What's Cooking, Inc., a Florida corporation, whose mailing address is 200 S.W. 32<sup>nd</sup> Avenue, Deerfield Beach, FL 33442 (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 production of the "Sounds At Sundown" event series as outlined in Exhibit "A" attached hereto and part of this AGREEMENT.

## **ARTICLE I**

### **THE AGREEMENT DOCUMENTS**

The Agreement Documents consist of all of the following: Scope of Services and the Certificates of Insurance, which are made a part of this AGREEMENT, or any additional documents which are required to be submitted under the AGREEMENT, and all amendments, modifications and supplements issued on or after the effective date of the AGREEMENT.

## **ARTICLE 2**

### **SCOPE OF THE WORK**

CONTRACTOR shall furnish all of the labor, materials, equipment, transportation, supplies and services necessary to perform all of the work required by the AGREEMENT for:

#### **SOUNDS AT SUNDOWN 2018-2019 EVENT SERIES**

The CONTRACTOR shall provide the services as outlined in the Scope of Services attached hereto as Exhibit "A".

## **ARTICLE 3**

### **AGREEMENT TIME**

TIME IS OF THE ESSENCE OF THIS AGREEMENT. The work to be performed under this AGREEMENT shall be commenced upon the date of execution of the AGREEMENT by the MCRA, or upon the Date of Commencement specified in the Notice to Proceed, if applicable.

## **ARTICLE 4**

### **CONTRACTOR FEES**

4.1. The CONTRACTOR shall pay the MCRA Twenty-Five and 00/100 Dollars \$25.00 for each participating Food Truck at each event to be held on the following dates :

October 6, November 3, December 1, 2018; January 5, February 2, March 2, April 6, May 4, June 1, July 6, August 3, and September 7, 2019.

- a. If CONTRACTOR or MCRA secures monetary sponsorship for "Sounds at Sundown", 80 percent (80%) of all sponsorship revenues will go the MCRA; 20 percent (20%) will go to CONTRACTOR.

## **ARTICLE 5**

### **ARTICLE 5** **PROTECTION OF PROPERTY**

5.1 At all times during the performance of this Contract, the CONTRACTOR shall protect the MCRA's property on account of the work being carried on pursuant to this Agreement.

5.2 Without limiting any of the other obligations or liabilities of the CONTRACTOR, the CONTRACTOR shall, at his own expense, provide and maintain in force, until all of its services to be performed under this Agreement have been completed and accepted by the MCRA (or for such duration as it otherwise specified herein), the following insurance coverage's:

A. Worker's Compensation Insurance to apply to all of the CONTRACTOR'S employees in compliance with the "Worker's Compensation Law" of the State of Florida and all applicable Federal Laws.

Employer's Liability with limits of \$100,000 per person, \$500,000 per occurrence and \$100,000 per each disease.

B. Comprehensive General Liability with minimum limits of one million dollars (\$1,000,000.00) 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 other than ISO Endorsement GL 21 06 (Engineers, Architects, or Surveyors Professional Liability exclusion), as Filed by the Insurance Services Office and must include:

1. Premises and/or Operations
2. Independent Contractors
3. Products and Completed Operations - CONTRACTOR shall maintain in force until at least three years after completion of all services required under this Agreement, coverage for Products and Completed Operations, including Broad Form Property Damage.
4. Broad Form Property Damage
5. Contractual Coverage applicable to this specific AGREEMENT
6. Personal Injury Coverage with minimum limits of coverage equal to those required for Bodily Injury Liability.

C. Business Automobile Liability with minimum limits of three hundred thousand dollars (\$300,000.00) 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 Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

1. Owned Vehicles
2. Hired and Non-Owned Vehicles
3. Employers' Non-Ownership

D. Professional Liability Insurance with minimum limits per occurrence applicable to CRA projects as follows:

	Contract Cost Range	Limit
1.	0 - 99,000	\$ 250,000
2.	100,000 - 299,000	500,000
3.	300,000 - 499,000	750,000
4.	500,000 – Above	1,000,000

Coverage shall be afforded on a form acceptable to the MCRA. CONTRACTOR shall maintain such professional liability insurance until at least one year after a Certificate of Occupancy is issued. CONTRACTOR shall insure that subcontractors used for any portion of the project, maintain adequate levels of Professional Liability Insurance.

E. Prior to commencement of services, the CONTRACTOR shall provide to the MCRA Certificates of Insurance evidencing the insurance coverage specified in the foregoing Paragraphs 5.2A, 5.2B, 5.2C, and 5.2D. All policies covered within subparagraphs 5.2A, 5.2B, 5.2C, and 5.2D, shall be endorsed to provide the MCRA with thirty (30) day's notice of cancellation and/or restriction. The MCRA shall be named as an additional insured as to CONTRACTOR's liability on policies referenced in this Section. The required Certificates of Insurance shall not only name the types of policies provided, but also shall refer specifically to this Agreement and section and to the above paragraphs in accordance with which insurance is being furnished and shall state that such insurance is as required by such paragraphs of this Agreement. The CONTRACTOR shall also make available to the MCRA a certified copy of the professional liability insurance policy required by paragraph 5.2D above for the MCRA's review. Upon request, the CONTRACTOR shall provide copies of all other insurance policies.

F. If the initial insurance policies required this Agreement expire prior to the completion of the services, renewal Certificates of Insurance of policies shall be furnished thirty (30) days prior to the date of their expiration. For Notice of Cancellation and/or Restriction; the policies must be endorsed to provide the MCRA with thirty (30) day's notice of cancellation and/or restriction.

G. The CONTRACTOR'S insurance shall apply on a primary basis.

5.3 The CONTRACTOR agrees to protect, defend, indemnify, and hold harmless the MCRA, its officers, employees, and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges, and other expenses or liabilities of every kind, including court costs, reasonable attorney's fees, and paralegal expenses, at both the trial and appellate levels in connection with or arising directly out of the work agreed to be performed herein, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of CONTRACTOR, its employees,

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servants, agents, and subcontractors. Without limiting the foregoing, any and all such claims, suits, etc., relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, is included in the indemnity. CONTRACTOR further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, etc., at his sole expense and agrees to bear all other costs and expenses related thereto, even if the claim(s) is groundless, false, or fraudulent. In case of injury to persons, animals, or property, real or personal, by reason of failure to erect or maintain proper and necessary barricades, safeguards, and signals or by reason of any negligence of any CONTRACTOR, or any of the CONTRACTOR'S agents, servants, or employees during the performance of the work pursuant to this Agreement, the MCRA may, through its officials, withhold such payments as long as it may deem necessary for the indemnity of the CRA as Owner, provided that the failure to pay the same shall not be construed or considered as a waiver of the indemnity as hereinabove set forth.

## **ARTICLE 6**

### **MISCELLANEOUS PROVISIONS**

6.1. Terms used in this AGREEMENT which are defined in the Special and General Conditions of the AGREEMENT shall have the meanings designated in those Conditions.

6.2. 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.

6.3 Attorney's Fees: In the event it becomes necessary for either party herein to seek legal means to enforce the terms of the AGREEMENT, the prevailing party shall be entitled to its reasonable attorney fees and court costs and paralegal fees at both the trial and appellate levels, to the extent permitted by law.

6.4 Law Governing: This Agreement shall be governed by and construed in accordance with the Laws of the State of Florida.

6.5. Should any part, term or provision of this AGREEMENT be by the courts decided 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.

6.6. 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. Violation of the terms of this Paragraph shall constitute a breach of AGREEMENT by CONTRACTOR and the MCRA may, at its discretion, cancel the AGREEMENT and all rights, title and interest of CONTRACTOR shall thereupon cease and terminate.

6.7. 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.

**6.8 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.**

6.9. DISPUTES: NOT WITHSTANDING 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 REDEVOPMENT 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 REDEVOPMENT 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 NECESSARILY IMPLY BAD FAITH, OR NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

6.10 TERMINATION FOR CONVENIENCE OF MCRA: Upon thirty (30) days written notice to CONTRACTOR, MCRA may, without cause and without prejudice to any other right or remedy, terminate the AGREEMENT for MCRA's convenience whenever MCRA determines that such termination is in the best interests of MCRA. Where the AGREEMENT is terminated for the convenience of MCRA, the notice of termination to CONTRACTOR must state that the AGREEMENT is being terminated for the convenience of MCRA under the termination clause, the effective date of the termination and the extent of termination. Upon receipt of the notice of termination for convenience, CONTRACTOR shall promptly discontinue all Work at the time and to the extent indicated on the notice of termination, terminate all outstanding subcontractors and purchase orders to the extent that they relate to the terminated portion of the AGREEMENT, and refrain from placing further orders. CONTRACTOR shall be paid for all work completed satisfactorily and up to the effective termination date. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such

termination.

6.11 Public Records. The MCRA is a public agency subject to Chapter 119, Florida Statutes. The CONTRACTOR shall comply with Florida's Public Records Law. Specifically, the CONTRACTOR shall

A. Keep and maintain public records required by the MCRA to perform under the Contract;

B. Upon request from the MCRA, 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 Chapter 119, Fla. Stat., or as otherwise provided by law;

C. Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and, following completion of the Contract, CONTRACTOR shall destroy all copies of such confidential and exempt records remaining in its possession after CONTRACTOR transfers the records in its possession to the MCRA; and

D. Upon completion of the Contract, CONTRACTOR shall transfer to the MCRA, at no cost to the MCRA, all public records in CONTRACTOR's possession. All records stored electronically by CONTRACTOR 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.

E. The failure of CONTRACTOR to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Contract and the MCRA shall enforce the Default in accordance with the provisions set forth herein.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK  
5790 MARGATE BLVD., MARGATE, FL 33063, (954) 935-5327,  
CityClerk@Margatefl.com**

6.12 Sovereign Immunity. The parties agree that the MCRA is a political subdivision of the State of Florida and therefore entitled to sovereign immunity. Nothing in this Agreement shall be construed to require the MCRA to indemnify CONTRACTOR, or insure CONTRACTOR for its negligence or to assume any liability for CONTRACTOR. Further,

any provision in this Agreement that requires the MCRA to indemnify, hold harmless or defend CONTRACTOR from liability for any other reason shall not alter the MCRA's waiver of sovereign immunity or extend the MCRA's liability beyond the limits established in Section 768.28 of the Florida Statutes, as amended.

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

**MARGATE COMMUNITY REDEVELOPMENT AGENCY**

**WITNESS:**

\_\_\_\_\_  
Samuel A. May, Executive Director

\_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_ day of \_\_\_\_\_, 2018

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

\_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_ day of \_\_\_\_\_, 2018

**APPROVED AS TO FORM:**

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



**FOR CONTRACTOR**

What's Cooking, Inc., a Florida  
Corporation

By: \_\_\_\_\_  
Jochen Esser, Owner

**(CORPORATE SEAL)**

ATTEST:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_ day of \_\_\_\_\_, 2018

**AGREEMENT BETWEEN MARGATE COMMUNITY REDEVELOPMENT AGENCY  
(MCRA) AND WHAT'S COOKING, INC.**