



CONTRACT

THIS CONTRACT, made and entered into this ____ day of August, 2019, by and between:

CITY OF MARGATE, FLORIDA, a municipal corporation organized and existing under the laws of the State of Florida, 5790 Margate Blvd., Margate, Florida, 33063, (hereinafter referred to as "CITY"); and D.W. Recreation Services, Inc., 2500 NW 79th Avenue, #258, Doral, Florida 33122 (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 as follows:

ARTICLE I

THE CONTRACT DOCUMENTS

The Contract Documents consist of all of the following: Request for Proposal (RFP) 2019-008 document in its entirety, CONTRACTOR'S executed RFP Proposal Form, Offeror's Certification Form, Non-Collusive Affidavit, CONTRACTOR'S response and submissions related to RFP 2019-008 which are inclusive of the Best and Final Offer (BAFO) from CONTRACTOR dated July 5, 2019 and associated pricing, all addenda and acknowledgements, which are made a part of this contract, and any additional documents which are required to be submitted under the Contract, and all amendments, modifications and supplements issued on or after the effective date of the Contract.

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 Contract Documents for:

RFP NO. 2019-008

Park Improvements – Southgate Park

ARTICLE 3

CONTRACT TIME

TIME IS OF THE ESSENCE OF THIS CONTRACT. The work to be performed under this Contract shall be commenced upon the date of Contract Commencement specified in the Notice to Proceed and subject to authorized adjustments shall be totally complete and ready for final payment within 120 days from the date of Notice to Proceed. Failure to achieve timely final completion shall be regarded as a breach of this Contract and subject to appropriate remedies.

ARTICLE 4

CONTRACT SUM

1. THIS IS A LUMP SUM CONTRACT BASED ON STANDARD BASE SERVICES TO BE PERFORMED AND DELIVERABLES PLUS OR MINUS AND OPTIONAL SERVICES AND DELIVERABLES. CITY shall pay to CONTRACTOR for standard base services and deliverables the amount of \$696,868.00 (Six hundred ninety-six thousand eight hundred sixty-eight dollars) upon its determination that all associated work has been completed.

CITY shall have the sole discretion to amend the base pay to CONTRACTOR for optional services, deliverables, and contingency operations as detailed below upon its determination that all associated work for a given optional service or deliverable has been satisfactorily completed.

- Remove/Replace Existing Playground: \$402,299.00 (amended per BAFO)
- Resurface Basketball Court: \$15,000.00 (unchanged – per BAFO)
- Construct New Walking/Jogging Trail: \$38,016.00 (unchanged – per BAFO)
- Multi-Purpose Field – Sod: \$35,000.00 (unchanged – per BAFO)
- Irrigation: \$35,600.00 (unchanged – per BAFO)
- Contingency*: \$10,000.00 (established by City)

- Add Concrete Borders to Walking/Jogging Trail: \$27,384.00 (added per BAFO)
- Remove/Replace 4ft High Fencing: \$29,425.00 (added per BAFO)
- Outdoor Fitness Equipment: \$47,969.00 (added per BAFO)
- Remove/Replace Basketball Posts/Goals: 7,209.00 (added per BAFO)
- Provide/Install 5 Benches: \$4,864.00 (added per BAFO)
- Provide/Install Chilled Drinking Fountain: \$12,102.00 (added per BAFO)
- Permit Fee Allowance: \$35,000.00 (established by City)
- Alternate Shade (LSI Shade) Canopy: -\$3,000.00 (added per BAFO)

*Note: Contingency funded work requires CITY's prior written authorization.

2. Payment shall be made at the Contract lump sum price with allowance for progress payments. This price shall be full compensation for all costs associated with completion of all the work in full conformity with the requirements as stated or shown, or both in the Contract Documents.

ARTICLE 5

PAYMENT

1. The CONTRACTOR shall requisition payment for work completed. Payment shall be made as above provided upon full completion of the job as determined by CITY together with properly executed releases of liens by all subcontractors, suppliers and materialmen as may be required by CITY. CITY shall make payment to CONTRACTOR within 45 calendar days after its approval.
2. CITY 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 unreasonable 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 CITY or to another contractor not remedied.
 - e. Reasonable evidence that the work cannot be completed for the unpaid balance of the Contract time.
 - 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 a consent of surety satisfactory to the CITY which will protect the CITY in the amount withheld, payment may be made in whole or in part.

ARTICLE 6

FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the CITY to the CONTRACTOR when all outstanding work has been completed and all controversy regarding the preceding has been settled to the CITY'S satisfaction.

ARTICLE 7

MISCELLANEOUS PROVISIONS

1. Terms used in this Agreement which are defined in the Special and General Conditions of the Contract shall have the meanings designated in those Conditions.
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 only in the Seventeenth Judicial Circuit in and for Broward County, Florida.
3. No waiver of any provision, covenant or condition within this agreement or of the breach of any provision, covenant or condition within this agreement shall be taken to constitute a waiver of any subsequent breach of such provision, covenant or condition.
4. CONTRACTOR shall not assign or transfer the Contract or its rights, title or interests therein without CITY'S prior written approval. The obligations undertaken by CONTRACTOR pursuant to the Contract shall not be delegated or assigned to any other person or firm unless CITY shall first consent in writing to the assignment.
5. CONTRACTOR in undertaking its obligations pursuant to this Contract shall not substitute any partnership identified in its original RFP response unless CITY shall first consent in writing to said partnership substitution.

6. Violation of the terms of Paragraph 4 and/or 5 shall constitute a breach of Contract by CONTRACTOR and the CITY may, at its discretion, cancel the Contract and all rights, title and interest of CONTRACTOR shall thereupon cease and terminate.
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.
8. **CITY 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 CONTRACT, ARISING OUT OF, UNDER, OR IN CONNECTION WITH THE CONSTRUCTION OF THE WORK, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR THE ACTIONS OR INACTIONS OF ANY PARTY.**
9. **PUBLIC RECORDS:** The Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and specifically agrees to:
 - A. Keep and maintain public records required by the City of Margate to perform the service.
 - B. Upon request from the City of Margate's custodian of public records, provide the City of Margate 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.
 - C. 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 City of Margate.
 - D. Upon completion of the Agreement, transfer, at no cost, to the City of Margate all public records in possession of the Contractor or keep and maintain public records required by the City of Margate to perform the service. If the Contractor transfers all public records to the City of Margate 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 City of Margate, upon request from the City of Margate's custodian of public records, in a format that is compatible with the information technology systems of the City of Margate.

**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) 954-972-6454

E-mail address:

recordsmanagement@margatefl.com

Mailing address:

5790 Margate Boulevard

Margate, FL 33063

10. Scrutinized Companies: In accordance with section 278.135, Florida Statutes, as amended, a company is ineligible to, and may not bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services if:

- a. Any amount of, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or
- b. One million dollars or more, if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:
 - i. Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum

Energy Sector List, created pursuant to section 215.73, Florida Statutes; or

ii. Is engaged in business operations in Syria.

c. By submitting a bid, proposal or response, the company, principals or owners certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations in Syria.

11. **Legal Representation:** It is acknowledged that each Party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and accordingly, the rule that a contract shall be interpreted against the party preparing same shall not apply herein due to the joint contributions of both parties.

12. **Force Majeure:** Neither Party will be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond the Parties' reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

13. **Indemnification:** Contractor will indemnify and defend the City's officers, directors, and employees ("Agency Indemnitees") from and against all claims, demands, losses, liabilities, reasonable costs and expenses arising out of a claim by a third party against an Agency Indemnatee resulting from any negligent act, error or omissions, or willful misconduct of the Contractor under or related to this Agreement, except in the case of negligent acts, omissions, or willful misconduct of the City or claims that fall under Workers Compensation Coverage.

14. **No Third Party Beneficiaries:** This Agreement does not create any third-party beneficiary rights in any individual or entity that is not a party to this Agreement.

15. **Non-Discrimination and Equal Opportunity:** During the performance of this Agreement, neither of the Parties nor the Parties' employees will discriminate against any person, whether employed by a Party or otherwise, on the basis of race, color, religion, gender, age, national origin, handicap, marital status, or political affiliation or belief. In all solicitations or advertisements for employees, agents, subcontractors or others to be engaged by a Party or placed by or on

behalf of a Party, the solicitation or advertisement shall state all qualified applicants shall received consideration for employment without regard to race, color, religion, gender, age, national origin, handicap, marital status, or political affiliation or belief.

16. **Counterparts:** If this Agreement requires the signature of the Parties, then this Agreement may be executed by electronic signature in multiple counterparts, each of which is considered an original.

17. **No Waiver of Sovereign Immunity:** Nothing contained herein is intended to service as a waiver of sovereign immunity by the City or as a waiver of limits of liability of rights existing under Section 768.28, Florida Statutes.

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

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

CITY OF MARGATE

Anthony N. Caggiano, Mayor

Cale Curtis, City Manager

____ day of _____, 2019

____ day of _____, 2019

ATTEST:

APPROVED AS TO FORM:

Joseph J. Kavanagh, City Clerk

Janette M. Smith, Esq.

____ day of _____, 2019

____ day of _____, 2019

FOR CONTRACTOR


FOR CORPORATION:



President

9th day of August, 2019

(CORPORATE SEAL)



Secretary

9th day of August, 2019

**AGREEMENT BETWEEN CITY OF MARGATE AND CONTRACTOR FOR THE
PROPOSED CITY OF MARGATE PARK IMPROVEMENTS – SOUTHGATE PARK**