

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made as of the 13 day of October in the year 2008, between **THE CITY OF LEESBURG, FLORIDA**, whose address is 501 West Meadow Street, Post Office Box 490630, Leesburg, Florida 34749-0630 (hereinafter referred to as the "CITY"), and **GAMETIME c/o DOMINICA RECREATION PRODUCTS, INC.** whose address is P.O. Box 520700 Longwood, FL 32752 (hereinafter referred to as the "PROFESSIONAL").

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties to this Agreement, and for other good and valuable considerations, the parties agree as follows:

1. Services. The PROFESSIONAL shall perform the following services: **SEE EXHIBIT "A"**. Nothing herein shall limit the CITY'S right to obtain proposals or services from other PROFESSIONALS for similar projects. The services to be performed under this agreement shall not exceed a total price of \$75,000.00. The cost of the services shall not exceed this amount unless the CITY has executed a written change order approving any increase in price. Said price includes all labor, equipment and materials needed to complete the project as described herein.

2. Labor and Materials. All work will be done in a competent and workmanlike manner, using quality, new materials. PROFESSIONAL shall guarantee all materials and workmanship as detailed in the manufacturer's warranty.

3. Insurance. The PROFESSIONAL will maintain throughout this Agreement the following insurance:

A. The PROFESSIONAL shall provide evidence of required minimum insurance by providing the CITY an ACORD or other Certificate of Insurance in forms acceptable to the Risk Manager for the City, prior to starting work, under the Agreement.

B. All required insurance shall be provided by insurers acceptable to the CITY with an A.M. Best rating of at least "A."

C. The PROFESSIONAL shall require, and shall be responsible for assuring that any and all of its subcontractors secure and maintain such insurance that are required by law to be provided on behalf of their employees and others until the completion of that subcontractors work.

D. The required insurance shall be secured and maintained for not less than the limits required by the CITY, or as required by law, whichever is greater.

E. The required insurance shall not limit the liability of the PROFESSIONAL. The CITY does not represent these coverages or amounts to be adequate or sufficient to protect the PROFESSIONAL'S interests or liabilities, but are merely required minimums.

F. All liability insurance, except professional liability, shall be written on an occurrence basis.

G. The PROFESSIONAL waives its right of recovery against the CITY to the extent permitted by its insurance policies.

H. Insurance required of the PROFESSIONAL, or any other insurance of the PROFESSIONAL shall be considered primary, and insurance of the CITY, if any, shall be considered excess as applicable to any claims, which arise out of the agreement, contract or lease.

I. Except for workers compensation and professional liability, the PROFESSIONALS insurance policies shall be endorsed to name the CITY OF LEESBURG as additional insured to the extent of the agreement, contract or lease.

J. The Certificate(s) of Insurance shall designate the CITY as certificate holder as follows:

**City of Leesburg
Attention: Mike Thornton, Purchasing Manager
P.O. Box 490630
Leesburg, Florida 34749-0630**

K. The Certificate(s) of Insurance shall include a reference to the project and/or purchase order number.

L. The Certificate(s) of Insurance shall indicate that the CITY shall be notified at least thirty (30) days in advance of cancellation.

M. The Certificate(s) of Insurance shall include all deductibles and/or self-insurance retentions for each line of insurance coverage.

N. The PROFESSIONAL, at the discretion of the Risk Manager for the CITY, shall provide information regarding the amount of claims payments or reserves chargeable to the aggregate amount of the PROFESSIONAL'S liability coverage(s).

4. Indemnification. The PROFESSIONAL agrees to make payment of all proper charges for labor required in the aforementioned work and PROFESSIONAL shall indemnify CITY and hold it harmless from and against any loss or damage, claim or cause of action, and any attorneys' fees and court costs, arising out of: any unpaid bills for labor, services or materials furnished to this project; any failure of performance of PROFESSIONAL under this Contract; or the negligence of the PROFESSIONAL in the performance of its duties under this Contract, or any act or omission on the part of the PROFESSIONAL, his agents, employees, or servants. PROFESSIONAL shall defend, indemnify, and save harmless the CITY or any of their officers,

agents, or servants and each and every one of them against and from all claims, suits, and costs of every kind and description, including attorney's fees, and from all damages to which the CITY or any of their officers, agents, or servants may be put by reason of injury to the persons or property of others resulting from the performance of PROFESSIONAL'S duties under this Contract, or through the negligence of the PROFESSIONAL in the performance of its duties under this Contract, or through any act or omission on the part of the PROFESSIONAL, his agents, employees, or servants.

If however, this agreement is a "construction contract" as defined in and encompassed by the provision of Florida Statutes § 725.06, then the following shall apply in place of the aforementioned indemnification provision:

The PROFESSIONAL shall indemnify the CITY and hold it, its officers, and its employees harmless from liabilities, losses, and costs, including, but not limited to, reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the PROFESSIONAL and persons employed or utilized by the PROFESSIONAL in the performance of this Agreement. The liability of the PROFESSIONAL shall, however, be limited to one million and 00/100 dollars (\$1,000,000.00) per occurrence, and the obligation of the PROFESSIONAL to indemnify the CITY shall be limited to acts, omissions, or defaults of the PROFESSIONAL; any contractors, subcontractors, sub-subcontractors, material men, or agents or employees of any of them, providing labor, services or materials in connection with the project; and the CITY, its officers, agents and employees, provided however that the PROFESSIONAL shall not be obligated to indemnify the CITY against losses arising from the gross negligence, or willful, wanton, or intentional misconduct of the CITY, its officers, agents and employees, or against statutory violations or punitive damages except to the extent caused by or resulting from the acts or omissions of the PROFESSIONAL, or any contractors, subcontractors, sub-subcontractors, material men, or agents or employees of any of them, providing labor, services, or materials in connection with this Agreement.

5. Codes, Laws, and Regulations. PROFESSIONAL will comply with all applicable codes, laws, regulations, standards, and ordinances in force during the term of this Agreement.

6. Permits, Licenses, and Fees. PROFESSIONAL will obtain and pay for all permits and licenses required by law that are associated with the PROFESSIONAL'S performance of the Scope of Services.

7. Access to Records. PROFESSIONAL will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. Said records will be available for examination by the CITY during PROFESSIONAL'S normal business hours. Said records will be maintained for a period of three (3) years after the date of the invoice.

8. Contingent Fees Prohibited. The PROFESSIONAL warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the PROFESSIONAL, to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the PROFESSIONAL any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the CITY shall have the right to terminate this Agreement

without further liability and at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid in breach of this Agreement.

9. Payment. CITY shall compensate PROFESSIONAL for their services in the following manner: **SEE EXHIBIT "A"**.

10. Ownership of Documents. All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda, and other documents, instruments, information and material prepared or accumulated by the PROFESSIONAL (or by such sub-consultants and specialty consultants) in rendering services hereunder shall be the sole property of the CITY who may have access to the reproducible copies at no additional cost other than printing. Provided, that the PROFESSIONAL shall in no way be liable or legally responsible to anyone for the CITY'S use of any such materials for another PROJECT, or following termination. All original documents shall be permanently kept on file at the office of the PROFESSIONAL.

11. Independent Contractor. The PROFESSIONAL agrees that he or she is an independent contractor and not an agent, joint venture, or employee of the CITY, and nothing in this Agreement shall be construed to be inconsistent with this relationship or status. None of the benefits provided by the CITY to its employees, including but not limited to, workers' compensation insurance, unemployment insurance, or retirement benefits, are available from the CITY to the PROFESSIONAL. PROFESSIONAL will be responsible for paying his own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid under this Agreement. The PROFESSIONAL shall be solely and primarily responsible for his and her acts during the performance of this Agreement.

12. Assignment. Neither party shall have the power to assign any of the duties or rights or any claim arising out of or related to the Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

13. No Third Party Beneficiaries. This Agreement gives no rights or benefits to anyone other than the PROFESSIONAL and the CITY.

14. Jurisdiction. 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. In the event of any litigation arising under or construing this Agreement, venue shall lie only in Lake County, Florida.

15. Term and Termination. The term of this Agreement shall be for a period of one (1) year or until the terms and conditions of this Agreement, including, but not limited to, its Scope of Services, have been completed, whichever occurs first, as determined by the CITY. Work shall commence within sixty (60) calendar days after CITY issues a Notice to Proceed. All services to be rendered by the PROFESSIONAL as specified in the Contract Documents shall be completed within one hundred twenty (120) calendar days after the City issues a Notice to Proceed. All or part of this Agreement may be terminated by the CITY for its convenience on fifteen (15) days

written notice to the PROFESSIONAL. In such event, the PROFESSIONAL will be entitled to compensation for services competently performed up to the date of termination.

16. Nonappropriation. The PROFESSIONAL understands and agrees that this Contract is subject to the availability of funds to the CITY to purchase the specified products/services. As used herein, a “nonappropriation” shall be defined as an occurrence wherein the CITY, in any fiscal period, does not allocate funds in its budget for the purchase of the specified products/services or other amounts owed pursuant to this Contract, from the source of funding which the CITY anticipates using to pay its obligations hereunder, and the CITY has no other funds, from sources another than ad valorem taxes, which it deems to be available to pay its obligations under this Contract. The CITY may terminate this Contract, with no further liability to the PROFESSIONAL, effective the first day of a fiscal period provided that:

- (a) A nonappropriation has occurred, and
- (b) The CITY has provided the PROFESSIONAL with written notice of termination, not less than fifteen (15) days before the proposed termination date.

Upon the occurrence of such nonappropriation the CITY shall not be obligated for payment for any fiscal period for which funds have not been appropriated.

17. Contact Person. The primary contact person under this Agreement for the PROFESSIONAL shall be ROB DOMINICA, Vice President. The primary contact person under this Agreement for the CITY shall be JENNIFER MAGAVERO.

18. Approval of Personnel. The CITY reserves the right to approve the contact person and the persons actually performing the services on behalf of PROFESSIONAL pursuant to this Agreement. If CITY, in its sole discretion, is dissatisfied with the contact person or the person or persons actually performing the services on behalf of PROFESSIONAL pursuant to this Agreement, CITY may require PROFESSIONAL assign a different person or persons be designated to be the contact person or to perform the PROFESSIONAL services hereunder.

19. Disclosure of Conflict. The PROFESSIONAL has an obligation to disclose to the CITY any situation that, while acting pursuant to this Agreement, would create a potential conflict of interest between the PROFESSIONAL and his duties under this Agreement.

20. Authority to Obligate. Each person signing this agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and bind and obligate such party with respect to all provisions contained in this agreement.

[Rest of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates under each signature.

THE CITY OF LEESBURG, FLORIDA

By: _____
Mayor/Commissioner

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

“PROFESSIONAL”

**GAMETIME c/o DOMINICA
RECREATION PRODUCTS, INC.**

By:  _____

Printed: Rob Dominica _____

Its: VP-DRP _____
(Title)

Date: 10/13/08 _____

Exhibit "A"

SCOPE OF SERVICES

- I. **Work.** PROFESSIONAL shall provide the selected playground equipment and services as detailed in quote #48390. Services do include installation of the equipment by a GameTime certified installer.
- II. **Request for Proposal.** Request for Proposal 80432 is incorporated by reference and made a part hereof.
 - a. **RFP Amended.** RFP 80352 is amended to reflect the deletion of Jessie Holliman Park and the addition of the Gymnasium area to receive the playground equipment.
- III. **Addenda.** Addendum 1 is incorporated by reference and made a part hereof.
- IV. **Vendor Bid Response.** The original bid response submitted by the PROFESSIONAL is incorporated by reference and made a part hereof.
 - a. **Equipment Quotation.** Vendor Quote number 48390 is incorporated and made a part hereof as Exhibit "B". This vendor quote details the equipment to be purchased and the corresponding price.
- V. **Payment.** Payment to PROFESSIONAL shall be made for work performed and accepted by the City.
- VI. **City Responsibility.** The City is responsible for removal of existing equipment, grading, installing borders, and play area surface material.

MARSH

CERTIFICATE OF INSURANCE

CERTIFICATE NUMBER
ATL-001624819-01

PRODUCER
MARSH USA, Inc.
3475 PIEDMONT ROAD NE
SUITE 1200
ATLANTA, GA 30305
Attn: Tami Rouse 404-995-3430

457102-MAIN--08-09 GT

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN.

INSURED
GAME TIME - A DIVISION OF PCH HOLDINGS, LLC
150 GAMETIME DRIVE
FORT PAYNE, AL 35967

| COMPANIES AFFORDING COVERAGE | |
|------------------------------|--------------------------------------------------|
| COMPANY | A Steadfast Insurance Company |
| COMPANY | B National Union Fire Ins Co Pittsburgh PA |
| COMPANY | C Ohio Casualty Insurance Co |
| COMPANY | D Travelers Property Casualty Company Of America |

COVERAGES This certificate supersedes and replaces any previously issued certificate for the policy period noted below. 2

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE DESCRIBED HEREIN HAVE BEEN ISSUED TO THE INSURED NAMED HEREIN FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THE CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| CO LTR | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS |
|---------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|------------------------|----------------------------------|-----------------------------------|----------------------------------------------------------------------------------------------------------------|
| A | GENERAL LIABILITY | SCO 534451203 | 08/01/08 | 08/01/09 | GENERAL AGGREGATE \$ 5,000,000 |
| | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY | | | | PRODUCTS - COMP/OP AGG \$ 2,000,000 |
| | <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR | | | | PERSONAL & ADV INJURY \$ 1,000,000 |
| | <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT | | | | EACH OCCURRENCE \$ 1,000,000 |
| | <input checked="" type="checkbox"/> SIR \$150,000/\$750,000 | | | | FIRE DAMAGE (Any one fire) \$ 50,000 |
| | <input checked="" type="checkbox"/> PER PROJECT/LOC \$10M | | | | MED EXP (Any one person) \$ EXCLUDED |
| | | | | | |
| D | AUTOMOBILE LIABILITY | TJCAP9518B945-08 | 08/01/08 | 08/01/09 | COMBINED SINGLE LIMIT \$ 1,000,000 |
| | <input checked="" type="checkbox"/> ANY AUTO | | | | BODILY INJURY (Per person) \$ |
| | <input type="checkbox"/> ALL OWNED AUTOS | | | | BODILY INJURY (Per accident) \$ |
| | <input checked="" type="checkbox"/> HIRED AUTOS | | | | PROPERTY DAMAGE \$ |
| | <input checked="" type="checkbox"/> NON-OWNED AUTOS | | | | |
| <input checked="" type="checkbox"/> Liability \$5,000 Ded. | | | | | |
| <input checked="" type="checkbox"/> Phy Dmg \$1,000 Comp/Coll | | | | | |
| | | | | | |
| | GARAGE LIABILITY | | | | AUTO ONLY - EA ACCIDENT \$ |
| | <input type="checkbox"/> ANY AUTO | | | | OTHER THAN AUTO ONLY: \$ |
| | | | | | EACH ACCIDENT \$ |
| | | | | | AGGREGATE \$ |
| | | | | | |
| B | EXCESS LIABILITY | BE3313104 | 08/01/08 | 08/01/09 | EACH OCCURRENCE \$ 25,000,000 |
| | <input checked="" type="checkbox"/> UMBRELLA FORM | | | | AGGREGATE \$ 25,000,000 |
| | <input type="checkbox"/> OTHER THAN UMBRELLA FORM | | | | SIR \$ 10,000 |
| | | | | | |
| D | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | TC2NUB-951B74608 (AOS) | 03/01/08 | 03/01/09 | <input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER \$ |
| | D THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: <input checked="" type="checkbox"/> INCL <input type="checkbox"/> EXCL | | | | EL EACH ACCIDENT \$ 500,000 |
| | | | | | EL DISEASE-POLICY LIMIT \$ 500,000 |
| | | | | | EL DISEASE-EACH EMPLOYEE \$ 500,000 |
| | | | | | |
| C | OTHER | ECO0953059239 | 08/01/08 | 08/01/09 | 25,000,000 Excess 25,000,000 |

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS
Re: Corrine Williams and Gym Area - Quote # 48390
City of Leesburg is named as additional insured as their interests may appear until completion of the job. Coverage is primary and others is non-contributory. A Waiver of Subrogation applies in favor of the certificate holder.

CERTIFICATE HOLDER **CANCELLATION**

CITY OF LEESBURG
ATTN: MIKE THORNTON, PURCHASING MANAGER
P.O. BOX 490630
LEESBURG, FL 34749-0630

SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE INSURER AFFORDING COVERAGE WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER AFFORDING COVERAGE, ITS AGENTS OR REPRESENTATIVES, OR THE ISSUER OF THIS CERTIFICATE.

AUTHORIZED REPRESENTATIVE
of Marsh USA Inc.
BY: Ted L. Young *Ted L. Young*