

CONTRACT 2025-34 REMOVAL AND REPLACEMENT OF PLAYGROUND AT HOPE PARK

This Contract No. 2025-34 for Removal and Replacement of Playground at Hope Park (the "Contract") is entered into by and between the City of North Port, Florida, a municipal corporation of the State of Florida ("City") and Playcore Wisconsin, Inc., dba GAMETIME, a foreign profit corporation, registered to do business in the State of Florida, whose principal place of business is 544 Chestnut Street, Chattanooga, Tennessee 37402 ("Contractor").

WITNESSETH

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the sufficiency and receipt of which are acknowledged, the parties agree as follows:

1. DEFINITIONS.

- A. "Work" means all labor, services, tasks, responsibilities, deliverables, and obligations that the Contractor is required to perform or provide under this Contract and the RFP.
- B. "Completion of Work" means the Work is fully performed in accordance with the Contract and the Scope of Services so that the playground may be used for its intended purpose.
- C. "Closeout Documents" means all documents required to be submitted by the Contractor upon completion of the Work, including manufacturer warranties; product manuals and installation instructions; maintenance and care instructions; inspection reports; as-built or record drawings, if required; certificates of compliance; and any other documentation reasonably necessary for the City to verify proper installation, operation, and acceptance of the Work.

2. CONTRACT TIMING.

- A. Effective Date. This Contract becomes effective on the date approved by City Commission ("Effective Date") and terminates upon the completion of the Work or as otherwise provided in this Contract.
- B. Time Is of the Essence. Time is of the essence in the performance of this Contract.
 - (1) Notice to Proceed. The Contractor agrees to commence operations within a mutually agreed upon time following written notification by the City to commence Work ("Notice to Proceed").
 - (2) Contract Time. All Work required under this Contract must be completed no later than September 30, 2026 (the "Contract Time"), subject only to delays caused by Force Majeure, as defined in Section 15, or pursuant to a written Extension as defined in Section 1(b).
 - (3) Extensions. The Contract Time may be extended due to unforeseen circumstances or unknown site conditions that alter the scope of Work only through a written change order or amendment signed

by both parties' authorized representatives and incorporated into this Contract..

C. Process for Completion.

- (1) Contractor Notice of Completion. When Contractor determines the Work is complete, Contractor will provide written notice to the city that the Work is ready for inspection.
- (2) City Inspection; Punch List. Within thirty (30) days after receipt of Contractor's notice, the City will inspect the Work and either (a) issue a consolidated Punch List of items to be corrected, or (b) issue Final Acceptance if no Punch List items are identified.
- (3) Correction Period. Contractor will complete all Punch List items within twenty (20) calendar days after receipt of the Punch List, unless a different time period is agreed to by the City in writing.
- (4) Final Completion and Final Acceptance. Upon Contractor's written notice that all Punch List items are complete and closeout deliverables have been furnished, the City will conduct a confirming inspection within fifteen (15) calendar days and issue Final Acceptance or identify any remaining items to be addressed. Final Acceptance is the City's approval for final payment as provided in Section 7. Notwithstanding any other provision in this Section, all Punch List items must be completed to the City's satisfaction on or before September 30, 2026.
- (5) Closeout Documents: At Final Completion, Contractor will deliver: manufacturer warranties and registrations for installed equipment and surfacing; manufacturer operations and maintenance manuals; a maintenance schedule recommended by the manufacturer; unconditional final payment affidavits and lien releases from the Contractor and any subcontractors or suppliers for amounts paid under this Contract; and any other documentation reasonably necessary for the City to verify proper installation, operation, and acceptance of the Work.

3. CONTRACT PRICE.

- A. The Contract Price is \$299,943.30. The Contract Price is a firm, fixed price as set forth in Exhibit I (Pricing).

4. CONTRACT DOCUMENTS.

- A. Scope. The Work consists of the removal of existing playground equipment and the installation of new replacement playground equipment and fall-zone material, utilizing the existing stand-alone shade cover, at Hope Park, as described in the Request for Proposal No. 2025-34("RFP") and the Contractor's accepted proposal. The Contractor shall perform all Work in accordance with the Contract Documents.
- B. Contract Documents; Incorporation by Reference. The following documents are incorporated into and made part of this Contract by reference as if fully set forth herein:

- (1) This Contract, including all duly executed attachments, exhibits, change orders, and amendments.
 - (2) Request for Proposal No. 2025-34, *Removal and Replacement of Playground at Hope Park*, including all attachments, addenda, specifications, and requirements thereto (“RFP”).
 - (3) The Contractor’s proposal submitted in response to RFP No. 2025-34.
 - (4) All applicable federal grant conditions, requirements, and compliance provisions, including Exhibits B through J.
- C. Any specific written direction from the City Manager or designee that is consistent with this Contract and applicable law.
- D. Order of Precedence. In the event of a conflict between or among the documents or any ambiguity or missing specifications or instruction, the following priority is established (highest to lowest):
- (1) This Contract, including all attachments, exhibits, change orders, and amendments.
 - (2) Applicable federal requirements and exhibits.
 - (3) The Request for Proposal No. 2025-34, *Removal and Replacement of Playground at Hope Park*, including all attachments, addenda, specifications, and requirements thereto (“RFP”).
 - (4) The Contractor’s response to the solicitation.
 - (5) Written direction from the City Manager or designee, to the extent consistent with the foregoing.
- E. Any RFP provisions requiring substantial completion procedures, construction-phase testing programs not specifically identified in Exhibit A, or other construction-administration processes are inapplicable to this Contract unless expressly restated in this Contract, Exhibit A, or required by applicable federal requirements or exhibits.

5. FEDERAL AND GRANT-RELATED REQUIREMENTS.

- A. The federal labor standards, equal opportunity requirements, and grant conditions applicable to this project are incorporated into this Contract as special conditions/exhibits and must be complied with by Contractor and its subcontractors. These include, as applicable based on the funding: Davis-Bacon and related acts, Copeland Act requirements, and other HUD/CDBG provisions; Build America, Buy America (BABA) requirements, including submission of the City’s BABA compliance certification form with supporting documentation upon request.
- B. Contractor is required to include and enforce all applicable federal requirements from this Contract in every subcontract and purchase order and to ensure the same requirements are flowed down to all lower-tier subcontractors and suppliers

6. THE CONTRACTOR'S RESPONSIBILITIES.

A. General. The Contractor will furnish all supervision, labor, materials, equipment, tools, transportation, and incidentals necessary to complete the Work in a good and workmanlike manner and in accordance with this Contract and the Contract Documents.

B. Supervision.

(1) The Contractor must supervise and direct all Work performed to the best of its ability, give the Work all the attention necessary for proper supervision and direction, and only employ workers with sufficient skill to perform the job assigned.

(2) The Contractor will protect existing improvements (including the existing shade structure) and maintain the site in a clean and orderly condition. Debris will be removed and legally disposed of at Contractor's expense.

(3) The Contractor assumes full responsibility for all acts, negligence, or omissions of its employees, for those subcontractors and their employees, and for those of all other persons doing work under a contract with the Contractor in furtherance of this Contract.

C. Labor and Materials.

(1) The Contractor must provide and pay for all labor, materials, and equipment, including tools, construction equipment, and machinery, as well as all transportation and all other facilities and services necessary for the proper completion of the Work in strict conformity with the provisions of this Contract and the Contract Documents.

(2) The Contractor represents and warrants that all equipment and materials used in the Work and made a part of the structures or permanently placed in connection with the Work, must be new unless otherwise specified in this Contract or Contract Documents, must be of good quality, free of defects, and in conformity with this Contract and related Contract Documents. The Contractor and the City agree that all equipment and materials not in conformity with this Contract are defective.

(3) The Contractor will install equipment and surfacing in accordance with manufacturer instructions and applicable federal playground safety standards and accessibility requirements identified in the Contract Documents.

D. Public Records Law. In accordance with Florida Statutes Section 119.0701, the Contractor must comply with all public records laws, and must specifically:

(1) Keep and maintain public records required by the City to perform the service.

(a) The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies.

(See <http://dos.state.fl.us/library-archives/records-management/general-records-schedules/>)

(b) "Public records" means and includes those items specified in Florida Statutes Section 119.011(12), as amended from time to time, and currently defined as: All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made, or received pursuant to law or ordinance or in connection with the transaction of official business with the City. The Contractor's records under this Contract include but are not limited to, supplier/subcontractor invoices and contracts, project documents, meeting notes, e-mails and all other documentation generated during the term and in furtherance of this Contract.

(2) Upon request from the City's custodian of public records, provide the City, at no cost, 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 for by law. All records kept electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

(3) Ensure that project 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 Contract term and if the Contractor does not transfer the records to the City following completion of the Contract, the Contractor must maintain the project records for the time specified in General Records Schedule GS1-SL for State and Local Government Agencies.

(4) Upon completion of the Contract, transfer, at no cost to the City, all public records in the Contractor's possession or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor must 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 the completion of the Contract, the Contractor must comply with all applicable requirements for retaining public records.

(5) IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF FLORIDA STATUTES CHAPTER 119 TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY CLERK, 4970 CITY HALL BOULEVARD, NORTH PORT, FLORIDA 34286, 941.429.7063 OR HOTLINE 941.429.7270, publicrecordsrequest@northportfl.gov.

(6) Failure of the Contractor to comply with these requirements constitutes a breach of this Contract. Further, the Contractor may be subject to penalties under Florida Statutes Section 119.10.

E. Contractor's Affidavit. When all Work contemplated by this Contract has been completed and has been inspected and approved by the City or its authorized agent, the Contractor must furnish the City with a

Contractor's Affidavit in a form acceptable to the City. Signed affidavits of payment are required from all subcontractors hired by the Contractor, unless payment is approved by the surety in accordance with Florida Statutes Section 255.05(11). The affidavits must state whether the subcontractor(s) have been paid in full or whether there are payments remaining. A list of all subcontractors must be furnished to the City prior to any payments against the Contract.

- F. Subcontractors and Suppliers. All contracts between the Contractor and any subcontractor that the Contractor hires must conform to the provisions of this Contract and the Contract Documents. The Contractor must incorporate the requirements of this Contract in the subcontracts. The Contractor must furnish the City with a list of all subcontractors and suppliers prior to any payments against the Contract. All subcontractors are subject to the City's approval. No change in subcontractors or suppliers will be made without written consent and approval from the City. All subcontractors must comply with Florida Statutes Section 448.095 for registration and use of the E-Verify system operated by the United States Department of Homeland Security.
- G. Licenses and Permits. The Contractor must pay all taxes required by law in connection with the activities done in furtherance of this Contract including sales, use, and similar taxes, and unless otherwise mutually agreed to in writing, must secure all licenses and permits necessary for proper completion of the Work, and pay any related fees.
- H. Laws and Regulations. Violation of any local, state, or federal law in the performance of this Contract constitutes a breach of this Contract. The Contractor must comply with all laws, ordinances, rules, regulations, and orders of all public authorities relating to the performance of the Work required. If any of the Contract documents are at variance with any law or regulation, the Contractor must notify the City promptly upon discovery.
- I. E-Verify System. During the term of this Contract, the Contractor must be registered with and use the Department of Homeland Security E-Verify System as required by Florida Statutes Section 448.095, Employment Eligibility, including but not limited to verifying the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor must maintain a copy of the affidavit for the duration of the Contract.
- J. Other Requirements. Contractor must comply with the Special Conditions for Community Development Block Grant (CDBG) as attached in Exhibit B, the Davis Bacon Wage Rate as Attached in Exhibit J, HUD-4010 U.S. Department of Housing and Urban Development Federal Labor Standards Provisions Office of Davis-Bacon and Labor Standards as Attached in Exhibit C, Appendix II to Part 200 of the CFR as Attached in Exhibit D, Equal Opportunity for Veterans as Attached in Exhibit E, and Section 3 contract clause as Attached in Exhibit F. To the extent that the terms of this Contract conflict with the special conditions for CDBG and Davis Bacon Wage Rate, the special conditions will control.

7. PAYMENT.

- A. Payment Requests. The Contractor must use a City approved form for all payment requests, along with

an updated work schedule reflecting the progress of all Work. Payment requests must be accompanied by either written approval and direction of the surety, or receipt of updated affidavits of payment by subcontractors and/or suppliers, in accordance with Florida Statutes Section 255.05(11). The Contractor's payment request must include any changes approved in previous payment requests.

- B. Payment. The Contract Price is net, and all payment requests are payable according to the Florida Local Government Prompt Payment Act (Florida Statutes Section 218.70, *et seq.*). The City or its authorized agent will make payment to the Contractor for all services or Work completed or materials furnished in accordance with this Contract only upon certification and approval of the payment request.
- C. Timing of Payments. The City will not make payments to the Contractor more frequently than monthly. Payment must be based on the total value of the Work completed and accepted during the preceding month subject to the City's review and approval of the Contractor's payment application and supporting documentation.
- D. Final Payment. After Final Acceptance, the Contractor's submittal for final payment must include the Contractor affidavit, final waiver and release of lien for all subcontractors, materialmen and suppliers, warranty of work, and consent of surety in the forms acceptable to the City. The City's or its authorized agent's approval is required before making final payment for all Work, materials, or services furnished under this Contract.

8. BOND REQUIREMENTS.

- A. Performance and Payment Bond. The Contractor must provide a performance and payment bond in the form prescribed in Florida Statutes Section 255.05, in the amount of one hundred percent (100%) of the Contract Price, the costs of which are to be paid by the Contractor. The bond will be acceptable to the City only if the surety company:
 - (1) Is licensed to do business in the State of Florida;
 - (2) Holds a certificate of authority authorizing it to write surety bonds in the State of Florida;
 - (3) Has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued;
 - (4) Is otherwise in compliance with the provisions of the Florida Insurance Code;
 - (5) Holds a currently valid certificate of authority issued by the United States Department of Treasury under 31 U.S.C. §§ 9304-9308;
 - (6) Has a current rating of at least Excellent (A or A-) as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc., of 75 Fulton Street, New York, New York 10038; and
 - (7) Has an underwriting limitation of at least two times the dollar amount of the Contract Price.

- B. Substitute Bond Required. If the surety company for any bond furnished by the Contractor files for bankruptcy, has a receiver appointed, is declared bankrupt, becomes insolvent, has an assignment made for the benefit of creditors, has its right to do business terminated in the State of Florida, or ceases to meet the requirements imposed by this Contract, the Contractor must, within five (5) calendar days thereafter, substitute another bond and surety company, both of which are subject to the City's approval.
- C. Surety Acceptance of Terms. The Contractor warrants that the Contractor delivered this Contract to the surety prior to execution of the bond, and that the surety company acknowledged that it has read the surety qualifications and surety obligations imposed by this Contract and satisfies all conditions.
- D. Delivery of the Bond. The Contractor must provide the required performance and payment bond to the City within ten (10) calendar days of the Effective Date. The Contractor's failure to provide the bond timely constitutes a default. Pursuant to Section 2-404 of the Code of City of North Port, Florida, upon default, the City may immediately award the bid to the next lowest responsive and responsible bidder and recover from the Contractor the difference in cost between the original winning bid and the next lowest responsive and responsible bidder. The default is only curable at the option of the City.
- E. Recording the Bond. The Contractor is responsible and bears all costs associated with recording the required bond or security with the Sarasota County Clerk of the Circuit Court. The Contractor must furnish the receipt for and certified copy of the recorded bond to the Purchasing Division at the time of the pre-construction meeting. The default is only curable at the option of the City.

9. **CONTRACTOR'S INSURANCE.**

A. Insurance.

- (1) Before performing any Work, the Contractor and subcontractors must procure and maintain during the Contract Time the insurance identified in this Section 8 against all claims of injury to persons or damage to property which may arise from or in connection with its performance of the Contract Work, unless otherwise specified. The insurance policies must remain in full force and effect until their obligations and warranty periods have been discharged or satisfied.
- (2) The policies of insurance must be primary and written on forms acceptable to the City, placed with insurance carriers approved and licensed by the State of Florida Department of Financial Services, and meet a minimum financial A.M. Best and Company, Inc. rating of no less than "A – Excellent: FSC VII."
- (3) The City Manager or designee may alter the amounts or types of insurance policies required by this Contract upon written agreement with the Contractor.
- (4) Proof of insurance must be filed by the Contractor with the City within ten (10) calendar days after the Effective Date of this Contract.

- (5) These insurance requirements are minimum requirements and in no way limit the indemnity covenants contained in this Contract. The City in no way warrants that the minimum limits are sufficient to protect the Contractor from liabilities that might arise out of the performance of the Work done by the Contractor, its agents, representatives, employees, or subcontractors. The Contractor is free to purchase additional insurance as it may determine necessary. The extent of the Contractor's liability for indemnity of the City must not be limited by insurance coverage or lack thereof, or unreasonably delayed for any reason, including but not limited to, insurance coverage disputes between the Contractor and its carrier.
- B. Workers' Compensation and Employers' Liability Insurance. Coverage pursuant to Florida Statutes, Chapter 440 must apply to all employees at the statutory limits provided by state and federal laws. The policy must include Employers' Liability with a limit of \$500,000 for each accident; \$500,000 for each employee; and \$500,000 policy limit for bodily injury or disease.
- C. Comprehensive Commercial General Liability Insurance. A comprehensive commercial general liability policy, including but not limited to bodily injury, property damage, broad form contractual liability and Explosion, Collapse and Underground (XCU) coverage.
- (1) The general aggregate limit must apply separately to this Contract, or the general aggregate limit must be twice the required occurrence limit.
- (2) The policy must include General Liability with a limit of \$1,000,000 for general aggregate; \$1,000,000 for each occurrence; \$1,000,000 for products and completed operations; \$100,000 for damage to rented premises; and \$241,665.00 for fire damage (Separate floater equal to the cost of the playground equipment).
- D. Automobile Liability Insurance. Automobile liability insurance to include all owned, leased, hired, and non-owned vehicles.
- (1) Automobile liability insurance must be written on a standard ISO form (CA 00 01) covering any auto (Code 1), or if the Contractor has no owned autos, hired (Code 8) and non-owned (Code 9) autos.
- (2) The policy must include liability insurance with a limit of \$1,000,000 for Combined Single Limit (CSL) for each accident; \$1,000,000 per person for bodily injury; \$1,000,000 per accident for bodily injury; and \$1,000,000 per accident for property damage.
- E. Waiver of Subrogation. All required insurance policies, except for Workers' Compensation, are to be endorsed with a Waiver of Subrogation. The insurance companies, by proper endorsement or through other means, must agree to waive all rights of subrogation against the City, its Commissioners, officers, officials, employees, volunteers, and the City's insurance carriers, for losses paid under the terms of these policies that arise from the contractual relationship or Work performed by the Contractor for the City. It is the Contractor's responsibility to notify its insurance company of the Waiver of Subrogation and request written authorization or the proper endorsement. ADDITIONALLY, THE CONTRACTOR, ITS

OFFICERS, OFFICIALS, AGENTS, EMPLOYEES, VOLUNTEERS, AND ANY SUBCONTRACTORS, AGREE TO WAIVE ALL RIGHTS OF SUBROGATION AGAINST THE CITY AND ITS INSURANCE CARRIERS FOR ANY LOSSES PAID, SUSTAINED, OR INCURRED, BUT NOT COVERED BY INSURANCE, THAT ARISE FROM THE CONTRACTUAL RELATIONSHIP OR WORK PERFORMED. THIS WAIVER APPLIES TO ANY DEDUCTIBLES OR SELF-INSURED RETENTIONS FOR WHICH THE CONTRACTOR OR ITS AGENTS MAY BE RESPONSIBLE.

F. Policy Form.

- (1) All policies required by this Contract, except for Workers' Compensation, or unless specific approval is given by Risk Management through the City's Purchasing Division, are to be written on an occurrence basis, and must name the City of North Port, Florida, its Commissioners, officers, agents, employees, and volunteers as additional insured as their interest may appear under this Contract. Claims made policies may be accepted for professional liability, hazardous materials and other risks as are authorized by the City's Purchasing Division. All claims made policies contributing to the satisfaction of the insurance requirements must have an extended reporting period option or automatic coverage of not less than two (2) years. If provided as an option, the Contractor must purchase the extended reporting period on cancellation or termination unless a new policy is affected with a retroactive date, including at least the last policy year.
- (2) Insurance requirements itemized in this Contract, and required of the Contractor, must be provided by or on behalf of all subcontractors to cover their operations performed under this Contract. The Contractor is responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to its subcontractors.
- (3) Each insurance policy required by this Contract must:
 - (a) Apply separately to each insured against whom claim is made and suit is brought, except with respect to limits of the insurer's liability.
 - (b) Be endorsed to state that coverage must not be suspended, voided, or cancelled by either party except after notice is delivered in accordance with the policy provisions. The Contractor is to notify the City's Purchasing Division of any occurrence by written notice via certified mail, return receipt requested.
- (4) The City retains the right to review, at any time, coverage, form, and amount of insurance.
- (5) The Contractor is solely responsible for payment of all premiums for insurance required in this Contract and is solely responsible for the payment of all deductibles, SIR (self-insured retentions), any loss or portion of any loss that is not covered by any available insurance policy, and retention as set forth in the policies, whether the City is an insured under the policy. The Contractor's insurance is considered primary for any loss, regardless of any insurance maintained by the City.
- (6) All certificates of insurance must be approved by the City before commencement of any Work. All required certificates of insurance must be accompanied by a copy of the additionally insured

documents/endorsements (CG 20101185 or combination of CG 2010370704 and CG 20370704). Certificates of insurance evidencing claims made or occurrences form coverage and conditions to this Contract, as well as the contract number and description of Work, are to be furnished to the City's Purchasing Division at 4970 City Hall Boulevard, Suite 337, North Port, FL 34286 prior to commencement of the Work and a minimum of thirty (30) calendar days prior to expiration of the insurance contract when applicable. The certificate of insurance issued by the underwriting department of the insurance carrier must certify compliance with the insurance requirements of this Contract. No changes may be made to these specifications without prior written approval by the City Manager or designee.

- G. Notices. Notices of Accidents (Occurrences) and Notices of Claims associated with Work being performed must be provided to the Contractor's insurer(s) and the City's Purchasing Division as soon as practicable after notice to the insured Contractor.

10. INDEMNITY, DEFENSE, AND RELEASE.

- A. **TO THE EXTENT PERMITTED BY FLORIDA LAW, THE CONTRACTOR ASSUMES ALL LIABILITY FOR, AND RELEASES AND AGREES TO DEFEND, INDEMNIFY, PROTECT, AND HOLD HARMLESS THE CITY, ITS COMMISSIONERS, OFFICERS, AGENTS AND EMPLOYEES, FROM ALL LIABILITIES, FINES, CLAIMS, ASSESSMENTS, SUITS, JUDGMENTS, DAMAGES, LOSSES AND COSTS, INCLUDING CONSEQUENTIAL, SPECIAL, INDIRECT, AND PUNITIVE DAMAGES, (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COURT COSTS, WHETHER THE FEES AND COSTS ARE INCURRED IN NEGOTIATIONS, AT THE TRIAL LEVEL OR ON APPEAL, OR IN THE COLLECTION OF ATTORNEYS' FEES), ARISING OUT OF ANY ACTS, ACTIONS, BREACHES, NEGLIGENCE OR OMISSIONS OF THE CONTRACTOR, OR THE CONTRACTOR'S OFFICERS, EMPLOYEES, AGENTS, SUB-CONTRACTORS, SUB-CONSULTANTS, AND OTHER PERSONS EMPLOYED OR UTILIZED BY THE CONTRACTOR IN THE PERFORMANCE OF, OR THE FAILURE TO PERFORM, THIS CONTRACT. THIS CONTRACT DOES NOT CONSTITUTE A WAIVER OF SOVEREIGN IMMUNITY OR CONSENT BY THE CITY OR ITS SUBDIVISIONS TO SUIT BY THIRD PARTIES.**
- B. **FURTHER, THE CONTRACTOR MUST FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF NORTH PORT, FLORIDA, FROM ANY SUITS, ACTIONS, DAMAGES, AND COSTS OF EVERY NAME AND DESCRIPTION, INCLUDING ATTORNEYS' FEES, ARISING FROM, OR RELATING TO VIOLATION OR INFRINGEMENT OF A TRADEMARK, COPYRIGHT, PATENT, TRADE SECRET, OR INTELLECTUAL PROPERTY RIGHT.**
- C. The City must provide all available information and assistance that the Contractor may reasonably require regarding any claim. In the event of a claim, the City must promptly notify the Contractor in writing by prepaid certified mail (return receipt requested) or by delivery through any nationally recognized courier service (Federal Express, UPS, USPS, or others) which provides evidence of delivery, at the address provided for receipt of notices in this Contract.
- D. The insurance coverage and limits required in this Contract may or may not be adequate to protect the City and the insurance coverage must not be deemed a limitation on the Contractor's liability under the indemnity provided in this section. In any proceedings between the parties arising out of or related to

this indemnity provision, the prevailing party must be reimbursed all costs, expenses, and reasonable attorney fees through all proceedings (at both trial and appellate levels).

- E. This Contract must not be deemed to affect the rights, privileges, and immunities of the City as set forth in Florida Statutes Section 768.28.
- F. The terms of this section survive the termination or completion of this Contract.

11. **TERMINATION.**

A. Termination With or Without Cause. The City Manager or designee may terminate the Work under this Contract with or without cause, in whole or in part, whenever the City Manager or designee determines that termination is in the City's best interest.

(1) Any termination must be effective by delivery to the Contractor of a written notice of termination at least thirty (30) calendar days before the date of termination, specifying the extent to which performance of the Work is terminated and the date upon which the termination becomes effective.

(2) Except as otherwise directed, the Contractor must cease all Work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services, or facilities except as necessary for completion of the portion of the Work not terminated; terminate all vendors and subcontracts; and settle all outstanding liabilities and claims.

(3) The Contractor must deliver to the City all documents (including but not limited to reports, designs, specifications, and all other data) prepared or obtained by the Contractor in connection with its services.

(4) The City must pay the Contractor in full settlement of all claims by it hereunder as the Work actually completed bears to the entire Work under this Contract, as determined by the City, less payments already made to the Contractor, and any amounts withheld by the City to settle claims or to pay indebtedness of the Contractor in accordance with the provisions of this Contract. The City has no obligation under any circumstance to make any payment to the Contractor for services that have not been performed or that are performed after the termination date.

B. Termination for Non-Appropriation. The parties acknowledge and agree that the financial obligations of the City in this Contract, or any subsequent contract entered into or referenced when the City is a party, are subject to the provisions of Florida Statutes Section 166.241, as amended, regardless of whether a particular obligation has been expressly so conditioned. Since funds are appropriated annually by the City Commission on a fiscal year basis, the City's legal liability for the payment of any costs must not arise unless and until appropriations for the costs are approved for the applicable fiscal year by the City Commission; nor will liability arise if a request for the appropriations is excluded from the budget approved by the City Commission. Notwithstanding the foregoing, no Commissioner, officer, employee, director, member or other natural person or agent of the City will have any personal liability in connection with a breach of the provisions of this Section or in the event of a default by the City under

this Section. This Contract does not constitute an indebtedness of the City nor an obligation of the City to levy or pledge any form of taxation nor an obligation for which the City has levied or pledged any form of taxation.

- C. Termination for Abandonment. If the Contractor abandons performance under this Contract, the City Manager or designee may terminate this Contract upon three (3) calendar days' written notice to the Contractor indicating the intention to do so. The written notice must state the evidence indicating the Contractor's abandonment.

- D. Contractor's Termination. The Contractor may terminate this Contract only in the event of the City failing to pay the Contractor's properly documented and submitted payment request within ninety (90) calendar days of the approval by the City's Administrative Agent, or if the project is suspended by the City for a period greater than ninety (90) calendar days.

- E. Court Proceedings. The City Manager or designee reserves the right to terminate this Contract in the event the Contractor is placed in either voluntary or involuntary bankruptcy, a receiver is appointed for the Contractor, or an assignment is made for the benefit of creditors.

- F. Breach. In the event the Contractor is in breach of this Contract, the City must provide written notice of the breach and the Contractor will have ten (10) calendar days to cure, calculated from the date the Contractor receives the notice. If the Contractor fails to cure within the ten (10) calendar days, the City Manager or designee may immediately terminate the Contract and/or refuse to make any additional payment, in whole or in part, and may demand the return of a portion or the entire amount previously paid to the Contractor due to:
 - (1) The quality of a portion or all the Contractor's Work not being in accordance with the requirements of this Contract;
 - (2) The quantity of the Contractor's Work not being as represented in the Contractor's payment request, or otherwise;
 - (3) The Contractor's rate of progress is, in the City's opinion, whether substantial or final completion, or both, inexcusably delayed;
 - (4) The Contractor's failure to pay the Contractor's project related obligations including, but not limited to, subcontractors, laborers, materialmen, equipment, and other suppliers;
 - (5) Claims made, or likely to be made, against the City or its property;
 - (6) Loss caused by the Contractor;
 - (7) The Contractor's failure or refusal to perform any of the obligations to the City, after written notice and a reasonable opportunity to cure, as set forth above; or

(8) Violation of any local, state, or federal law in the performance of this Contract constitutes a breach of this Contract.

G. Waiver. Any delay or failure to enforce any breach of this Contract by either the City or the Contractor will not be binding upon the waiving party unless the waiver is in writing. In the event of a written waiver, the waiver will not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach must not operate or be construed to operate as a waiver of any subsequent default or breach.

H. Payment Adjustments. If the City makes written demand upon the Contractor for amounts previously paid by the City, the Contractor must promptly comply with the demand. The City's rights hereunder survive the term of this Contract and are not waived by final payment and/or acceptance.

I. E-Verify Violation.

(1) If the City has a good faith belief that the Contractor has knowingly violated Florida Statutes Section 448.09(1), then this Contract may be terminated by the City.

(2) If the City has a good faith belief that a subcontractor has knowingly violated Florida Statutes Section 448.09(1), but the Contractor has otherwise complied, then the City must promptly notify the Contractor and order the Contractor to immediately terminate this Contract with the subcontractor.

(3) The Contractor must comply with Florida Statutes Section 448.095(2) for any challenge to termination of this Contract under this Section.

J. Remedies. In the event of a default or breach of the Contract terms, the City may avail itself of every remedy specifically given to it now existing at law or in equity, and every remedy must be in addition to every other remedy so specifically given or otherwise so existing and may be exercised from time to time and as often and in the order as may be deemed expedient by the City. The exercise, or the beginning of the exercise, of one remedy must not be deemed to be a waiver of the right to exercise, at the same time or thereafter, any other remedy. The City's rights and remedies as set forth in this Contract are not exclusive and are in addition to any other rights and remedies available to it in law or in equity.

12. EQUAL EMPLOYMENT OPPORTUNITY.

The City of North Port, Florida, consistent with the provisions of Title VII of the Civil Rights Act of 1964 ("Title VII") and the regulations issued pursuant to Title VII and Florida Statutes Section 287.09451, states that in any contract entered into pursuant to the advertisement, minority business enterprises will be afforded full opportunity to submit replies in response to the advertisement and will not be discriminated against on the

grounds of race, color or national origin in consideration for an award.

13. NOTICES

Any notice, demand, communication, or request required or permitted by this Contract must be sent by certified mail, return receipt requested, or by delivery through any nationally recognized courier service (Federal Express, UPS, USPS, and others) that provides evidence of delivery, at the address provided for receipt of notices in this Contract and e-mailed to:

As to the City: Cheryl Greiner, Project Manager
City of North Port
Parks and Recreation Department
4970 City Hall Blvd
North Port, Florida 34286
941-429-7013
cgreiner@northportfl.gov

With copies of claims
and demands sent to: City of North Port, Florida
City Attorney's Office
4970 City Hall Boulevard
North Port, Florida 34286
northportcityattorney@northportfl.gov

As to Contractor: Playcore Wisconsin, Inc., dba GAMETIME
Rob Dominica
544 Chestnut Street
Chattanooga, Tennessee 37402
407-331-0101
robd@gametime.com

Notices are effective when received at the addresses specified above. Changes to the respective addresses may be made from time to time by either party by written notice. This Section must not be construed to restrict the transmission of routine communications between representatives of the Contractor and the City.

14. ATTORNEYS' FEES.

In any proceedings between the parties arising out of or related to this Contract, the prevailing party must be reimbursed all costs, expenses, and reasonable attorneys' fees through all proceedings, at both trial and appellate levels.

15. SCRUTINIZED COMPANIES.

- A. Certification. As required by Florida Statutes Section 287.135(2), for contracts of any amount, the Contractor must certify on a form provided by the City, that it is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Florida Statutes Section 215.4725, and that it is not engaged in a boycott of Israel.
- B. Requirements. As required by Florida Statutes Section 287.135(5), for contracts of \$1,000,000 or more, the Contractor must certify on a form provided by the City, that all of the following are true:
- (1) The Contractor is not on the Scrutinized Companies that Boycott Israel List, created pursuant to Florida Statutes Section 215.4725, and that it is not engaged in a boycott of Israel; and
 - (2) The Contractor is not on the Scrutinized Companies with Activities in Sudan list or the Scrutinized Companies with Activities in Iran Petroleum Energy Sector list, created pursuant to Florida Statutes Section 215.473; and
 - (3) The Contractor is not engaged in business operations in Cuba or Syria.
- C. Termination. If the Contractor provides a false certification or has been placed on one of the above-noted Lists of Scrutinized Companies or has engaged in business operations in Cuba or Syria, the Contractor will be in breach of this Contract and the City may terminate this Contract.
- D. Penalty.
- (1) A Contractor that has been found to have provided a false certification may be subject to a civil penalty equal to the greater of \$2 million or twice the amount of this Contract, plus all reasonable attorneys' fees and costs, including any costs for investigations that led to the finding of the false certification; and
 - (2) Will be ineligible to bid on any contract with the City for three (3) years after the date the City determined that the Contractor submitted a false certification.

16. FORCE MAJEURE.

- A. Should performance of any obligation created under this Contract become illegal or impossible by reason of:
- (1) A strike or work stoppage, unless caused by a negligent act or omission of either party;
 - (2) An act of God, tornado, hurricane, flood, sinkhole, fire, explosion, landslide, earthquake, epidemic, pandemic, quarantine, pestilence, or extremely abnormal and excessively inclement weather;
 - (3) An act of a public enemy, act of war, terrorism, effect of nuclear radiation, blockage, insurrection,

riot, civil disturbance, state of martial law, or national or international calamity;

(4) A declared emergency of the federal, state, or local government; or

(5) Any other like event that is beyond the reasonable control of the non-performing party;

then the performance of the obligation is suspended during the period of, and only to the extent of, the prevention or hindrance, provided that:

(6) The non-performing party provides written notice within five (5) calendar days of the event of *force majeure*, describing the event in sufficient detail, including but not limited to: the nature of the occurrence, a good faith estimate of the duration of the delay, proof of how the event has precluded the non-performing party from performing, and the means and methods for correcting the delay; and continues to furnish timely reports of all actions required for it to commence or resume performance of its obligations under this Contract;

(7) The excuse of performance is no greater in scope or duration than required by the event of *force majeure*;

(8) No obligations of either party that arose before the *force majeure* are excused as a result of the event of *force majeure*; and

(9) The non-performing party uses all reasonable diligence to remedy its inability to perform.

B. Economic hardship of a party does not constitute an event of *force majeure*. A party must not be excused from performance due to forces that it could have reasonably prevented, removed, or remediated prior to, during, or immediately after their occurrence.

C. The non-performing party's affected obligations under this Contract will be temporarily suspended during, but not longer than, the continuance of the event of *force majeure* and a reasonable time thereafter as may be required to commence or resume performance of its obligations. Notwithstanding the above, performance will not be excused under this Section for a period exceeding two (2) consecutive months, provided that in extenuating circumstances, the City may excuse performance for a longer term.

D. The term of this Contract will be extended by a period equal to that during which the non-performing party's performance is suspended under this Section.

17. MISCELLANEOUS.

A. Authority to Execute. The signature by any person to this Contract will be deemed a personal warranty that the person has the full power and authority to bind any corporation, partnership, or any other

business or governmental entity for which the person purports to act hereunder.

- B. Binding Effect/Counterparts. By the signatures affixed hereto, the parties intend to be bound by the terms and conditions hereof. This Contract is binding upon and will inure to the benefit of the parties and their respective heirs, executors, administrators, successors, and assigns. It may be signed in counterparts.
- C. Governing Law and Venue. The laws of the State of Florida govern the rights, obligations, and remedies of the parties under this Contract. The exclusive venues for any legal or judicial proceedings in connection with the enforcement or interpretation of this Contract are the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida, and the United States District Court for the Middle District of Florida.
- D. No Agency. Nothing contained herein must be deemed or construed as creating the relationship of principal and agent, or of partnership or joint venture, between the parties, it being understood and agreed that no provision, or any acts of the parties will be deemed to create any relationship between them other than that as detailed.
- E. Severability. In the event any court holds any provision of this Contract to be illegal, invalid, or unenforceable, the remaining provisions must be valid and binding upon the parties. One or more waivers by either party of any breach of any provision, term, condition, or covenant must not be construed as a waiver of a subsequent breach by the other party.
- F. Headings. The descriptive titles appearing in each respective paragraph are for convenience only and are not a part of this Contract and do not affect its construction.
- G. Complete Contract. This Contract, together with the Contract Documents identified herein, incorporates and includes all prior negotiations, correspondence, agreements, or understandings between the parties, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Contract that are not contained in this document. This Contract supersedes all other agreements between the parties, whether oral or written, with respect to the subject matter.
- H. Amendment. No amendment, change, or addendum to this Contract is enforceable unless agreed to in writing by both parties and incorporated into this Contract. Any amendments changing the City's financial obligations under this Contract will require approval by the City Commission. The City Commission hereby authorizes the City Manager or designee to approve and execute all Contract amendments on behalf of the City that do not change the City's financial obligations under this Contract.
- I. Assignment. The Contractor must not assign this Contract or any right or responsibility without the written consent of the City.
- I. Non-Discrimination. The City of North Port, Florida does not discriminate on the basis of race, color,

national origin, sex, age, disability, family, or religious status in administration of its programs, activities, or services. The Contractor must not administer this Contract in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual's race, color, national origin, sex, age, disability, family or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.

- J. Non-Exclusivity. No guarantee of certain services, volume of work, or quantity of projects is implied. This contract does not entitle any firm to exclusive rights to City of North Port contracts. The City reserves the right to acquire professional services from other firms or perform "in-house" services for any purpose as it deems appropriate. The City may, in its sole discretion, procure the services of any consultants at any time for any project other than those selected.

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IN WITNESS WHEREOF, the parties have executed this Contract on the dates as indicated below.

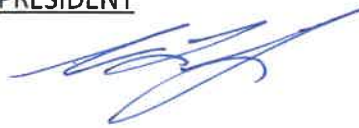
CONTRACTOR

PLAYCORE WISCONSIN, INC., DBA GAMETIME

By: 

Name: ROB DOMINICA

Title: PRESIDENT





COURTNEY L. CRAWFORD
Commission # HH 698489
Expires July 26, 2029

Approved by the City Commission of the City of North Port, Florida on this _____ day of _____, 2026.

CITY OF NORTH PORT, FLORIDA

A. JEROME FLETCHER II, ICMA-CM, MPA
CITY MANAGER

ATTEST

HEATHER FAUST, MMC
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS

MICHAEL FUINO, B.C.S.
CITY ATTORNEY