

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AT RISK

THIS AGREEMENT, is made by and between CITY OF PORT ST. LUCIE, FLORIDA, a municipal corporation, duly organized under the laws of the State of Florida, hereinafter called, "Owner," and ACTION SPORTS DESIGN, LLC, 12400 W Hwy 71, Suite 350-348, Austin, TX 78738, a Foreign Limited Liability Company, hereinafter, "CMAR."

W I T N E S S E T H:

WHEREAS, the Owner desires to enter into a contract with a company to provide construction manager at risk services for the Tradition Regional Park – Adaptive Wheel Park Facility ("PROJECT"); and

WHEREAS, design services for the **PROJECT** are completed and there are no design services contemplated under this Agreement; and

WHEREAS, the CMAR has submitted single source justification documents and explanations, including that CMAR is one of the approved firms to provide design and construction services for BMX-sanctioned facilities; and

WHEREAS, the Owner and CMAR are desirous of entering into such a definitive agreement pursuant to which CMAR will provide construction management services, all as more fully set forth herein; and

WHEREAS, the parties agree that these recitals for part of and are incorporated into this Agreement; and

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

ARTICLE 1. EXTENT OF AGREEMENT; DEFINITIONS

Agreement. The CMAR accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The CMAR covenants with the Owner to furnish its skill and judgment as a Construction Manager and General Contractor with specific expertise in the planning and construction of the **PROJECT** and to cooperate with the Owner and the Owner's representatives in furthering the interests of the Owner. The CMAR agrees to furnish efficient business administration and superintendence and use its best efforts to complete the **PROJECT** in the best and most expeditious and economical manner, consistent with the interests of the Owner. The CMAR agrees to provide the services required by this Agreement to complete such services consistent with the Owner's direction, the approved program, and the terms of this Agreement, in accordance with a standard of care which is ordinarily exercised by other construction managers and general contractors in similar circumstances.

1.01 Extent of Agreement. This Agreement for Construction Management Services for the

PROJECT represents the entire agreement between the Owner and the CMAR and supersedes any prior negotiations, representations or agreements. This Agreement shall not be superseded by any provisions of the Project Plans and Specifications and may be amended only by written instrument signed by both Owner and CMAR. This Agreement is intended to be consistent with the design services previously completed under City Contract #20230085.

1.02 Definitions. As used in this Agreement, the words and phrases described in Exhibit C attached hereto and incorporated herein, shall have the meanings as set forth in that Exhibit C.

1.03 Use of Words and Phrases. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural as well as the singular number, and the word "person" shall include corporations and associations, including public bodies, as well as natural persons. "Herein," "hereby," "hereunder," "hereof," "herein- before," and "hereinafter" and other equivalent words refer to this Agreement and not solely to the particular portion thereof in which any such word is used.

ARTICLE 2. PURPOSE; PROPOSAL; SCHEDULE

2.01 Purpose. The purpose of this Agreement is to provide for the provision of Construction Management Services for the **PROJECT** by the CMAR, and construction of the **PROJECT** by the CMAR in accordance with the Project Plans and Specifications. The further purpose of this Agreement is to define and delineate the responsibilities and obligations of the parties to this Agreement and to express the desire of all such parties to cooperate together to accomplish the purposes and expectations of this Agreement.

2.02 CMAR Proposal. CMAR submitted a Proposal to Owner, dated May 20, 2025. It is the intent of the parties that the CMAR's Proposal for Construction Management Services be implemented pursuant to this Agreement, and, therefore, such Proposal is hereby merged into and is effectuated by this Agreement. Reference is hereby made to the Proposal, as well as any supplementary representations and statements furnished by CMAR to the Owner during the CMAR selection process. The parties acknowledge that the representations and statements or information contained therein have been relied upon by the Owner and have resulted in the selection of CMAR as the construction manager for this **PROJECT**. However, Owner acknowledges that the terms and conditions for the performance of the CMAR and for the provision of its services are solely as contained within the Contract Documents. The Contract Documents shall include the following documents, listed in order of precedence:

- (1) Amendments or Change Orders
- (2) This Agreement
- (3) Exhibits A, B, C, & D
- (4) CMAR's Proposal

2.01 Project Schedule. The development and equipping of the **PROJECT** shall be undertaken and completed in accordance with the Project Schedule contained in Exhibit A. The Project Schedule may be amended, revised and supplemented, and may thereafter be revised from time to time by mutual agreement by the parties in a Contract Amendment

ARTICLE 3. COMPENSATION

3.01 Guaranteed Maximum Price (“GMP”). The parties have agreed on a GMP of \$5,889,252.39, as more fully described in Exhibit B- Project Costs and Compensation.

3.02 CMAR’s Compensation. Shall be as indicated in Exhibit B – Project Costs and Compensation.

3.03 The Project; Changes in the Project; Additional Fee. If the GMP is increased by Owner, the CMAR shall be entitled to receive an additional fee **to be negotiated and established by the Parties, in writing, at the time of such increase to the GMP**. Provided, however, CMAR shall not be entitled to receive any portion of such additional compensation to the extent that the delay in performance results from acts of commission, omission, negligence, or fault of the CMAR, its agents or employees. Payment of CMAR’s additional fee shall be made in equal monthly installments calculated by dividing the additional fee by the months remaining in the Project Schedule.

3.04 Project Costs and Compensation. All Project Costs and Compensation shall be as indicated in Exhibit B.

- (a) The Owner reserves the right to execute Direct Material Purchase(s) for any and all materials provided to the **PROJECT**. This is contemplated/included in Exhibit B – Project Costs and Compensation.

3.04.1 Direct Material Purchases. The CMAR shall review the design for the purpose of identifying major equipment and/or material purchases that may be advantageous for the Owner to purchase directly from suppliers as a cost saving measure. Once items have been identified and quantified by the CMAR, and approved by the Owner for direct purchase, the Owner will issue purchase orders and process payment for invoices approved by the CMAR.

The CMAR shall prepare and be responsible for all quantities, descriptions, specifications, guarantees, payment schedules, etc., and all other required information to be included in the Owner issued purchase order.

3.05 Items and Expenses Included in CMAR’s Compensation. Exhibit B includes full payment for services set forth in this Agreement, including but not limited to, salaries or other compensation of CMAR’s officers, partners and/or employees; general operating expenses incurred by CMAR and relating to this **PROJECT**, including the cost of management, supervision and data processing staff, job office equipment and supplies, and

other similar items necessary for CMAR to perform its services hereunder.

- 3.06 Contingency. The Exhibit B GMP includes an agreed-upon seven percent (7%) Contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The CMAR will be required to furnish documentation evidencing proposed expenditures to this Contingency prior to written authorization for the release of funds by the Owner. Actual and contemplated expenditures from the Contingency shall be delivered to Owner by the CMAR in its monthly reporting.

- 3.06.1 Contingency Remaining. Upon completion of the **PROJECT**, any funds remaining in the Contingency shall, at one hundred percent (100%), be returned to the Owner and deducted through a change order.

ARTICLE 4.

CONSTRUCTION MANAGER'S RESPONSIBILITIES AND SERVICES

(1) Narrative Reporting. The CMAR shall prepare written reports as described hereunder. All such reports shall be in 8 1/2" x 11" or other convenient format. Copies shall be maintained at the Project Site and transmitted to the Owner. A bound copy of the complete narrative report shall be submitted to the Owner at the conclusion of the **PROJECT**. The narrative reporting subsystem shall include the following reports:

(a) A Bi-Weekly executive summary which provides an overview of current and outstanding issues and pending decisions, primary party responsible for the decision, future developments and expected achievements, and any problems or delays, including code violations found by the Permitting Authority.

(b) A monthly cost narrative describing the current cost estimate and status of the **PROJECT**.

(c) A Bi-Weekly scheduling narrative summarizing the current status of the overall Project Schedule. This report shall include an analysis of the various Project Schedules, a description of the critical path, and the analysis as necessary to compare planned performance with actual performance.

(d) A monthly accounting narrative describing the current actual cost and payment status of the **PROJECT** with supporting documents. This report shall relate current encumbrances and expenditures to the budget allocations.

Given the short duration of the **PROJECT** (approximately four months, weather permitting), the Owner reserves the right to adjust the frequency and format of required narrative reporting to reflect the **PROJECT's** scale. At minimum, the CMAR shall provide a monthly executive summary and construction progress report, with cost and schedule updates as warranted. Daily construction diaries may be summarized weekly unless otherwise requested by the City during key construction activities.

(e) The CMAR shall jointly develop with the Owner a detailed plan,

inclusive of punch lists, final inspections, maintenance training and turn over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The occupancy schedule shall be produced and updated monthly from its inception through final Owner occupancy. All punch list items shall be completed before the Owner accepts turnover. retainage shall not be paid to CMAR until the Owner signs off that all punch list items have been completed to Owner's satisfaction.

(2) Job Site Facilities. The CMAR shall arrange for all job site facilities required and necessary to enable the CMAR to perform its duties and to accommodate any representatives of the Owner which the Owner may choose to have present on the job.

(3) Weather Protection. The CMAR shall ascertain what temporary enclosures of building areas, if any, should be provided for and may be provided in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. The CMAR shall also be responsible for providing weather protection for work in progress and for materials stored on site.

4.02 Performance Bond and Labor and Material Payment Bond. Prior to the start of construction, the CMAR shall obtain for the benefit of and directed to the Owner, a labor and material payment and performance bond, satisfying the requirements of section 255.05, Florida Statutes, covering the faithful performance by the CMAR of its obligations under this Agreement, including but not limited to, the construction of the **PROJECT** on the Project Site, and the payment of all obligations arising thereunder, including all payments to subcontractors, laborers and materialmen (the "Payment and Performance Bond"). The surety selected by the CMAR to provide the Payment and Performance Bond shall be rated as "A or better" as to general policy holders rating as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc. and/or shall be approved by the Owner prior the issuance of such Bond, which approval shall not be unreasonably withheld.

Attorneys-in-fact who sign Bonds for Owner projects must file with such Bond a certified copy of their Power of Attorney to sign such Bond. All agents of Surety companies must list their name, address, and telephone number on all Bonds. The life of all Bonds provided to the Owner shall extend twelve (12) months beyond the date of final payment and shall contain a waiver of alternation to the terms of the Agreement, extensions of time and/or forbearance on the part of the Owner. The Owner shall not return or release the Bonds for a period of twelve (12) months after the date of final payment to allow time for claims against the Bonds during this period.

4.03 Construction Phase; Building Permit; Code Inspection.

(1) Permits. The Owner shall pay for all permits, however, the amount of any permits shall be taken from the Contingency via Change Order. The CMAR will be responsible for submitting all compliance and permitting documentation for review and approval with the appropriate City departments, as required by applicable City standards and procedures. The CMAR should anticipate any compliance or permitting related fees as part of the proposed GMP.

(2) Code Inspections. All projects require detailed code compliance inspection during construction in disciplines determined by the Permitting Authority. These disciplines normally include, but are not necessarily limited to, structural, mechanical,

electrical, plumbing, and general building. The CMAR shall notify the appropriate inspector(s) no less than 24 hours in advance that the work is ready for inspection and before the work is covered up. All inspection shall be made for conformance with the applicable ordinances and building codes. Costs for all re-inspections of work found defective and subsequently repaired shall not be included as project costs and shall be borne by the CMAR or as provided in the contract between CMAR and subcontractor. CMAR shall also coordinate with Owner's staff to schedule a Risk assessment at least two weeks prior to the facility's projected opening.

(3) CMAR's Staff. The CMAR shall maintain sufficient off-site support staff and competent full-time staff at the Project Site authorized to act on behalf of the CMAR to coordinate, inspect and provide general direction of the work and progress of the subcontractors and the CMAR shall provide no less than those personnel during construction. The CMAR shall not change any of those persons unless mutually agreed to by the Owner and CMAR. In such case, the Owner shall have the right to approval of the qualifications of the replacement personnel. The Owner shall have the right to request to replace the staff at the Project Site at any time during the construction.

(4) Lines of Authority. The CMAR shall establish and maintain lines of authority for its personnel and shall provide this information to the Owner and all other affected parties, such as the code inspectors of the Permitting Authority and the subcontractors to provide general direction of the work and progress of the various phases and subcontractors. The Owner may, but is not obligated to, attend meetings between the CMAR and his subcontractors.

(5) Quality Control. The CMAR shall develop and maintain a program acceptable to the Owner to assure quality control of the construction. The CMAR shall be responsible for and supervise the work of all subcontractors, providing instructions to each when their work does not conform to the requirements of the Project Plans and Specifications and the CMAR shall continue to coordinate the work of each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work.

(6) Subcontractor. The CMAR shall solely supervise the subcontractors. The CMAR shall negotiate all change orders and field orders with all affected subcontractors and shall review the costs and advise the Owner of their validity and reasonableness, acting in the Owner's best interest. Before any work is begun on any change order which is to be funded through Contingency, approval for use of Contingency funds must be secured from Owner and a written authorization from the Owner must be issued. However, when there is an imminent threat to health and safety, and Owner's concurrence is impractical, the CMAR shall act immediately to remove the threats to health and safety and shall subsequently fully inform Owner of all such action taken.

The CMAR shall maintain a suspense control system to promote expeditious handling. The CMAR shall request the AE to make interpretations of the drawings or specifications requested of him by the subcontractors and shall maintain a business system to promote timely response. The CMAR shall inform the AE which shop drawings or requests for clarification have the greatest urgency and need to be responded to first. The purpose shall be to enable the AE to prioritize requests coming from the CMAR. The AE shall timely

respond. The CMAR shall advise the Owner and AE when timely response is not occurring on any of the above.

(7) Job Site Requirements.

(a) The CMAR shall provide each of the following activities as a part of its services hereunder:

(i) Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.

(ii) Maintain a roster of companies on the **PROJECT** with names and telephone numbers of key personnel.

(iii) Establish and enforce job rules governing parking, clean-up, use of facilities and work discipline.

(iv) Provide labor relationships management and equal opportunity employment for a harmonious productive **PROJECT**.

(v) Provide and administer a safety program for the **PROJECT** to meet OSHA requirements. Monitor for subcontractor compliance without relieving them of responsibilities to perform work in accordance with best acceptable practice.

(vi) Provide quality control program.

(vii) Provide miscellaneous office supplies that support the construction efforts which are consumed by its own forces.

(viii) Provide for travel to and from its home office to the Project Site and to those other places within St. Lucie County as required by the **PROJECT**.

(b) The CMAR shall provide personnel and equipment or shall arrange for separate subcontractors to provide each of the following:

(i) Distribution of all required bidding documents and shop drawings, including the sets required by the Permitting Authority's inspectors.

(8) Job Site Administration. The CMAR shall provide as part of its services, job site administrative functions during construction to assure proper documentation, including but not limited to the following:

(a) Job Meetings. Hold progress and coordination meetings to provide for a timely completed **PROJECT**. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing(s), labor allocation, etc. Review and implement revisions to the Project Schedule. Monitor and promote safety requirements. The CMAR shall use the job site meetings as a

tool for (i) preplanning of work and enforcing schedules and for establishing procedures, responsibilities and identification of authority for all to clearly understand; (ii) identify party or parties responsible for follow up on any problems, delay items or questions, and (iii) record course for solution. The CMAR shall visit each pending item at each subsequent meeting until resolution is achieved and shall require all present to make known any problems or delaying event known to those present for appropriate attention and resolution.

(b) Material and Equipment Expediting. Provide staff to closely monitor material and equipment deliveries, critically important checking and follow-up procedures on supplier commitments of all subcontractors and maintain a material and equipment expediting log.

(c) Payments to Subcontractors. Develop and implement a procedure for review, processing and payment of applications by subcontractors for progress and final payments.

(d) Subcontractors Progress. Prepare periodic punch lists for subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.

(e) Substantial Completion. The CMAR and Owner will conduct a pre-substantial completion inspection. The CMAR will prepare the pre-substantial completion punch list from which the CMAR will develop a completion schedule. The CMAR shall ascertain when the work or designated portions thereof are ready for Owner substantial completion inspection. The CMAR shall provide a complete list of incomplete or unsatisfactory items (preliminary punch list) to the Owner prior to this inspection. The Owner shall add to this list additional incomplete or unsatisfactory item(s). The CMAR shall prepare a punch list of items to be completed and a schedule for their completion including completion dates for review and approval by the Owner ("Punch List Completion Date").

(f) Final Completion. Monitor the subcontractors' performance on the completion of the **PROJECT** and provide notice to the Owner that the work is completed and ready for final inspection. Secure and transmit three (3) copies to the Owner of all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and maintenance books, including a final completion form.

(g) Startup. With the Owner's personnel, direct the check-out of utilities, operations, systems and equipment for readiness and assist in their initial start up and testing by the subcontractors.

(h) Record Drawings. The CMAR shall monitor the progress of its own forces or its subcontractors on marked up field prints so as to provide completed record drawings to be turned over for preparation of As-builts as required herein.

(i) Administrative Records. The CMAR will provide the City with access to the following through a media chosen by the City:

Contracts or Purchase Orders

Shop Drawings submittal/Approval Logs
 Equipment Purchase/Delivery Logs
 Contract Drawings and Specifications with Amendment
 Warranties and Guarantees
 Cost Proposal Request Payment
 Request Records Meeting
 Minutes
 Cost Estimates Bulletin
 Quotations Lab Test
 Reports
 Insurance Certificates and Bonds Contract
 Changes
 Purchase Orders
 Material Purchase Delivery Logs Technical
 Standards
 Design Handbooks
 Record Drawing Marked Print Operating
 and Maintenance Instruction Daily
 Progress Reports
 Transmittal Records Inspection
 Reports
 Bid/Award Information
 Bid Analysis and Negotiations
 Punch Lists
 PMIS Schedule and updates
 Suspense (Tickler) Files of Outstanding Requirements
 Documentation of Good Faith Effort
 Correspondence Files
 Records Relating to Payment of Subcontractors

The **PROJECT** records shall be available at all reasonable times to the Owner for reference, review, or reproduction.

(9) Shop Drawings and Samples. After checking and verifying all field measurements, the CMAR will submit to the Owner for approval, in accordance with the acceptable schedule of Shop Drawing submission, five copies of all Shop Drawings, which shall have been checked by and stamped with the approval of the CMAR. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction, and similar information.

The CMAR will also submit to the Owner for approval with such promptness as to cause no delay in the Work, all samples required by the Contract Documents. All samples will have been checked by and stamped with the approval of the CMAR, identified clearly as to material, manufacturer, any pertinent numbers and the use for which intended.

(a) At the time of each submission, the CMAR will in writing call the Owner's attention to any deviations that the Shop Drawing or sample may have from the requirements of the Contract Documents and, in addition, shall cause a specific notation to be made on each shop drawing submitted for review and approval of each such variation.

The Owner will review and approve with reasonable promptness Shop Drawings and Samples, but its review and approval shall be only for conformance with the design concept of the **PROJECT** and for compliance with the information given in the Contract

Documents. The approval of a separate item as such will not indicate approval of the assembly in which the item functions. The CMAR will make any corrections required by the Owner and will return the required number of corrected copies of Shop Drawings and resubmit new samples until approved. All cost incurred for the resubmitted shop drawing shall be the CMAR responsibility. The CMAR's stamp of approval on any Shop Drawing or sample shall constitute a representation to the Owner that the CMAR has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers and similar data or he assumes full responsibility for doing so, and that he has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Document.

No work requiring a Shop Drawing or sample submissions shall be commenced until the submission has been approved by the Owner. Any related work performed prior to review and approval by the Owner of the pertinent submission will be sole expense and responsibility of the CMAR. A copy of each approved Shop Drawing and each approved sample shall be kept in good order by the CMAR at the site and shall be available to the Owner.

The Owner's approval of Shop Drawings or samples shall not relieve the CMAR from his responsibility for any deviations from the requirements of the Contract Documents, unless the CMAR has in writing called the Owner's attention to such deviation at the time of submission and the Owner has given written approval to the specific deviation; or shall any approval by the Owner relieve the CMAR from responsibility for errors or omissions in the Shop Drawings.

4.04 Project Schedule; Substantial Completion; Occupancy.

(1) Completion of Construction. The date of Substantial Completion of the **PROJECT** or a designated portion thereof is the date when construction is sufficiently complete in accordance with the Project Plans and Specifications so the Owner can lawfully occupy or utilize the **PROJECT** for the use for which it is intended. The CMAR warranty shall commence on the Project Final Completion Date.

(2) Owner Occupancy. The CMAR shall provide services which will provide a successful and timely Owner occupancy of the **PROJECT**. The CMAR shall provide consultation and **PROJECT** management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the subcontractors, "on line" in such conditions as will satisfy Owner operations requirements. The CMAR shall catalog operational and maintenance requirements of the equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability. The CMAR shall provide operations training, in equipment use, for building operators.

(3) Record Drawings. The CMAR shall continuously review Record Drawings and mark up progress prints. Upon receipt by CMAR of its final payment due hereunder, the CMAR shall provide to the Owner an original of marked-up, Record Project Plans and Specifications showing the location and dimensions of the **PROJECT** as constructed, which documents shall be certified as being correct by the CMAR.

4.05 CMAR's Warranty. The CMAR warrants that all labor and materials will conform to the Project Plans and Specifications. The CMAR further warrants that all materials and

equipment will be new, of good quality, and free from any defects. With respect to the same work, the CMAR further agrees to correct or replace as necessary all work found by the Owner to be defective in material and workmanship or not in conformance with the Project Plans and Specifications for a period of one year from the Project Final Completion Date. CMAR shall use its best efforts and due diligence to ensure that, during the warranty period, those entities or individuals who have provided direct warranties to the Owner as required by the contract documents perform all required warranty work in a timely manner and at the sole cost and expense of such warranty providers. The direct cost of any warranty work shall be paid by CMAR. The CMAR shall collect and deliver to the Owner any specific written guaranties or warranties given by others as required by the contract documents. Also, the CMAR shall conduct, jointly with the Owner, a warranty inspection eleven (11) months after the Project Final Completion Date.

4.06 Lien Free Construction. All construction services provided by CMAR or any of the subcontractors in construction of the **PROJECT** on the Project Site shall be accomplished in a manner that will result in no liens, claims, or encumbrances being imposed against the **PROJECT**. Subject to the laws of the State of Florida and of the United States, neither CMAR nor any subcontractor, supplier of materials, laborer, or other person shall file or maintain any lien for labor or materials delivered in the performance of this Agreement against the City. The right to maintain such lien for any or all of the above parties is hereby expressly waived.

4.07 Liquidated Damages. If all work under this Agreement is not completed by the LD Beginning Date, including any extensions of time for excusable delays as herein provided, the CMAR shall provide to the City one thousand dollars (\$1,000.00) as fixed, agreed, and liquidated damages for each calendar day of delay until the work is completed. The parties agree that this amount represents a good faith estimate on the part of the parties as to the potential intangible damages that would occur because of late completion. CMAR hereby expressly waives and relinquishes any right which it may have to seek to characterize the above noted liquidated damages as a penalty, which the parties agree represents a fair and reasonable estimate of Owner's intangible damages at the time of contracting. The CMAR and its sureties shall be jointly and severally liable to the Owner for the total amount of damages under this section. This shall be the Owner's sole remedy as to these delays. Any other provision herein that provides for multiple, alternative, discretionary, or cumulative relief, shall not apply to this paragraph.

ARTICLE 5. OWNER'S RESPONSIBILITY

5.01 Project Site; Title. The Owner hereby represents to the CMAR that it currently has and will maintain up through and including the Project Substantial Completion Date, good title to all the real property constituting the Project Site. Owner agrees to resolve, at its expense, any disputes relating to the ownership and use of the Project Site which might arise during the course of construction.

5.02 Surveys; Soil Tests and Other Project Site Information. Owner shall be responsible for providing a legal description and certified land survey of the Project Site in a form and content, and with such specificity as may be required by the CMAR to perform their services. To the extent deemed necessary by the Owner, and solely at the Owner's expense,

the Owner may engage the services of a Geotechnical Consultant to perform test borings and other underground soils testing as may be deemed necessary by the CMAR. CMAR shall not be obligated to provide such surveys or soil tests and shall be entitled to rely upon the accuracy and completeness of the information provided to CMAR. Owner shall provide CMAR as soon as reasonably possible following the execution of this Agreement all surveys or other survey information in its possession describing the physical characteristics of the Project Site, together with soils reports, subsurface investigations, utility locations, deed restrictions, easements and legal descriptions then in its possession or control.

5.03 Information; Communication; Coordination. The Owner hereby designates the City Manager or the City Manager's designee as Project Coordinator, as listed below, to act on the Owner's behalf with respect to the **PROJECT**. The Project Coordinator shall examine all documents or requests for information submitted by the CMAR and shall advise CMAR of Owner's decisions pertaining thereto within a reasonable period of time to avoid unreasonable delay in the progress of the CMAR's services. The CMAR shall indicate if any such documents or requests warrant priority consideration. However, decisions pertaining to approval of the Project Schedule as it relates to the date of Substantial Completion, the Project Cost, CMAR's Compensation, documentation relating to use of Contingency, and/or approving or changing the GMP, shall only be effective when approved in writing by the Owner. Owner reserves the right to designate a different Project Coordinator provided CMAR is notified in writing of any such change. Owner may communicate with subcontractors, materialmen, laborers or suppliers engaged to perform services on the **PROJECT**. The Owner shall not attempt to direct the work of or otherwise interfere with any subcontractor, materialmen, laborer, or supplier or otherwise interfere with the work of the CMAR.

5.04 Construction Inspections and Coordination. Owner and CMAR agree to cooperate and coordinate with each other and all Permitting Authorities, including specifically the City of Port St. Lucie Building Department.

5.05 Acknowledgment. The CMAR recognizes and acknowledges that Owner is a governmental body with certain procedural requirements to be satisfied. CMAR has and will make reasonable allowance in its performance of services for such additional time as may be required for approvals and decisions by the Owner and any other necessary government agency. Specific directions and approval made by the Owner shall be in writing authorized at its regular or special City Council meetings, or as otherwise consistent with authorities granted to the Project Coordinator.

ARTICLE 6.

SUBCONTRACTOR SELECTION AND PAYMENT PROCESS

6.01 Definition. A subcontractor is a person or organization who has a direct contract with the CMAR to perform any work at the Project Site. Except as specifically set forth herein with respect to direct materials acquisitions by Owner, nothing contained in this Agreement or in any contract document does or shall create any contractual relationship between the Owner and any subcontractor. Specifically, the CMAR is not acting as an agent of the Owner with respect to any subcontractor.

6.02 Subcontracts. The CMAR shall provide a copy of all proposed subcontracts, including general supplementary conditions to the Owner. The parties acknowledge the subcontractors listed in the single source justification documents provided by CMAR,

contained in Exhibit D, are intended subcontractors for the **PROJECT**. If there are any material changes to the representations made by CMAR in the single source justification documents and/or any additional subcontractors needed, CMAR agrees to cooperate with Owner in any procurement methodology and process which is required by law, and also cooperate with Owner in any such methodology or process desired by Owner (and not otherwise legally required) provided that such cooperation does not result in any extension of the Project Substantial Completion Date established by the Project Schedule. In all events, CMAR shall ensure that it uses only subcontractors that meet the requirements for the City to qualify as a USA BMX sanctioned facility.

6.03 Application for Progress Payments.

(1) Once per month, by the tenth (10th) day of each month, the CMAR will submit to the Owner for review an invoice filled out and signed by the CMAR covering the actual Work completed as of the date of the Application and supported by such data. Also, if payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to and authorized in writing, the application for Payment shall also be accompanied by such supporting data, satisfactory to the Owner, as well establish the Owner's title to the material and equipment and protect its interest therein, including applicable insurance. All progress payments will be subject to a five percent (5%) retainage percentage. Such retainage shall be paid and will be issued in the final payment after acceptance by the Owner of the Work.

The Estimate and Requisition for Payment form shall list individually, each instrument of change to the GMP or Contingency, its approved value, the amount previously requisitioned, the amount sought in the current requisition, the total value of completed work and, if requested by the Owner, the Estimate and Requisition for Payment form shall, for each instrument of change to the GMP or Contingency, be further detailed to provide a breakdown, by trade, of the values and requisition amounts for each trade, for each change instrument.

(2) Approval of Payments. The Owner will, within five (5) calendar days after receipt of each Application for Payment, either indicate their approval of payment and within fifteen (15) calendar days pay the CMAR ninety five percent (95%) of the portion of the GMP properly allocated to labor, materials and equipment incorporated in the Work and ninety-five percent (95%) of the portion of the GMP properly allocated to materials and equipment suitably stored at the site or at some other location, or return the application to the CMAR indicating in writing the reason for refusing to approve payment. In the latter case, the CMAR may make the necessary corrections and resubmit the application to the Owner.

The Owner may reject an Application for Payment for any lawful reason, including, but not limited to:

- 1) The Work is defective.
- 2) A portion of such payment is the subject of a dispute or claim that has been filed.
- 3) The amount has been reduced because of Modifications.
- 4) The Owner has been required to correct defective Work or complete the Work in accordance with the guarantee and warranty.
- 5) Of unsatisfactory prosecution of the Work, including failure to clean up.

(3) The CMAR shall pay each subcontractor, upon receipt of payment from the Owner, out of the amount paid to the CMAR on account of such subcontractor's work, the amount to which the subcontractor is entitled in accordance with the terms of the CMAR's contract with such subcontractor. The CMAR shall, by appropriate agreement with each subcontract, require each subcontractor to make payments to subcontractors in a similar manner. After receipt of payment from Owner, if the need should arise to withhold payments to subcontractors for any reason, as solely determined by CMAR, the CMAR shall promptly restore such monies to the Owner, adjusting pay requests and Project bookkeeping as required.

Commencing with second application of the Estimate and Requisition for Payment form, the Owner may require, as a condition of payment, the submission of releases of lien from any or all subcontractors. Where the Owner so requires, the releases furnished shall be original copies, properly executed and notarized, in a form acceptable to the Owner.

(4) The CMAR warrants that upon payment of any retainage, materials and equipment covered by a partial payment request will pass to Owner either by incorporation in construction or upon receipt of payment by the CMAR, whichever occurs first; (a) work, materials and equipment covered by previous partial payment requests are free and clear of liens, claims, security interests or encumbrances, hereinafter referred to as "liens"; and (b) no work, materials or equipment covered by a partial payment request will have been acquired by the CMAR, or any other person performing work at the site or furnishing materials or equipment for the **PROJECT** is subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the CMAR or other such person.

6.04 Application for Final Payment.

(1) Final Inspection. Upon written notice from the CMAR that the **PROJECT** is complete, the Owner will make a final inspection with the CMAR and will notify the CMAR in writing of any particulars which this inspection reveals that the Work is defective. The CMAR shall immediately make such corrections as are necessary to remedy the defects within a reasonable time.

(2) Final Inspection for Payment. After the CMAR has completed any such corrections to the satisfaction of the Owner and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection and other documents as required by the Contract Documents, he may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by legally effective final releases or waivers of liens from the CMAR and all subcontractor(s) which performed services for the CMAR pursuant to the Contract Documents and the consent of surety, if applicable to final payment.

(3) Approval of Final Payment. The Owner will, within fifteen (15) calendar days after receipt of an application for final payment, either indicate its approval of the Estimate and Requisition Application for Payment and within fifteen (15) calendar days pay the CMAR the amount approved by the Owner and issue a Certificate of Final Completion, or return the application indicating in writing the reason for refusing to approve payment. In the latter case, the CMAR may make the necessary corrections and resubmit the application to the Owner.

If, after Substantial Completion of the Work, final completion is materially delayed through no fault of the CMAR, the Owner shall and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted, shall be submitted by the CMAR to the Owner, prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

If liquidated damages are to be deducted from the final payment, the Owner shall so notify the CMAR in writing at least ten (10) calendar days prior to the Owner's submittal to Finance.

(4) Final Accounting Costs. Final accounting of costs of the work shall be provided by the CMAR in the form of a detailed cost report showing vendor, invoice number, and date of invoice for all costs, all sorted by trade division cost code as is maintained by the CMAR in its accounting system. Upon receipt of the detailed cost report final accounting, the Owner may have access to all accounting records at the CMAR's place of business for review and reporting purposes by the Owner's designated accountant, whether external or internal.

ARTICLE 7 CHANGES IN THE PROJECT

7.01 Amending and Supplementing Contract Documents. The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- (a) a formal Written Amendment,
- (b) a Change Order, or
- (c) a Field Directive Change.

However, any change to the GMP or Contract Time may only be changed by the Change Order or a Written Amendment.

7.02 Changes in Work. Without invalidating the Agreement, the Owner may unilaterally and at any time or from time-to-time order additions, deletions or revisions in the Work; these will be authorized by Change Orders or Field Directive Change. Upon receipt of a Change Order or Field Directive Change, the CMAR will proceed with the Work involved.

All such Work shall be executed under the applicable conditions of the Contract Documents.

If any Change Order or Field Directive Change causes an increase or decrease in the GMP or any extension or shortening of the Contract Time, an equitable adjustment will be made.

Additional Work performed by the CMAR without written authorization of a change in the form approved in this section will not entitle him to an increase in the GMP or any extension of the Contract Time, except in the case of an emergency.

It is the CMAR's responsibility to notify the Surety of any changes affecting the general scope of the Work or change of the GMP and the amount of the applicable Bonds shall be adjusted accordingly. The Surety's acceptance must be submitted to the Owner, by the CMAR, within ten (10) calendar days of the initiation of the change.

7.03 Change of GMP. The GMP constitutes the total compensation payable to the CMAR for performing the Work. All duties, responsibilities, and obligations assigned to or undertaken by the CMAR shall be at his expense without change in the GMP.

The GMP may only be changed by a Change Order or **Contract Amendment**. Any claim for an increase or decrease in the GMP shall be in writing and delivered to the Owner within fifteen (15) calendar days of the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within fifty (50) calendar days after such occurrence (unless Owner allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the CMAR's written statement that the amount claimed covers all known amounts (direct, indirect, and consequential) to which the CMAR has reason to believe it is entitled as a result of the occurrence of said event. No claim for an adjustment in the GMP will be valid if not submitted in accordance with this paragraph. No claim by the CMAR for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Agreement.

The value of any Work covered by a Change Order or of any claim for an increase or decrease in the GMP shall be determined in one of the following ways:

(a) Where the Work involved is covered by unit prices contained in the Contract Documents or subsequently agreed upon, by application of unit prices to the quantities of the items involved.

(b) By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.

(c) By cost of the Work and mutually acceptable fixed amount for overhead and profit agreed upon by the parties.

In such cases the CMAR will submit in the form prescribed by the Owner an itemized cost breakdown together with supporting data. The amount of credit to be allowed by the CMAR to the Owner for any such change which results in a net decrease in cost will be the amount

of the actual net decrease as determined by the Owner. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase or decrease, if any.

Regardless of how the value of Work covered by a Change Order or any other claim for an increase or decrease in the GMP is determined, in no case shall the total amount of overhead and profit, including all tiers of subcontractors, exceed 15% of the cost of the Work, unless otherwise approved by the Owner.

7.04 Change of Contract Time. The Contract Time may only be changed by a Change Order or Contract Amendment. Any claim for an extension in the Contract Time shall be in writing and delivered to the Owner within fifteen (15) calendar days of the occurrence of the event giving rise to the claim and stating general nature of the claim. Notice of the extent of the claim with supporting data (analysis and documentation) shall be delivered within sixty (60) calendar days after such occurrence (unless the Owner allows an additional period of time to ascertain in more accurate data in support of the claim) and shall be accompanied by the CMAR's written statement that the adjustment claim is the entire adjustment to which the CMAR has reason to believe it is entitled as a result of the occurrence of said event. If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that the weather conditions had an adverse effect on the scheduled construction. No claim by the CMAR under this provision shall be allowed unless the CMAR has given the notice, analysis, and documentation required in this paragraph. All claims for adjustment in the Contract Time resulting from any such claim shall be incorporated in a Change Order or Contract Amendment.

The Owner shall not be responsible for any delay in the completion of the **PROJECT** where the delay is beyond the control or without fault or negligence on behalf of the Owner. The Owner shall not be held accountable for extra compensation or an extension of time due to default by the CMAR, subcontractors, or suppliers in the furnishing of labor or materials for the **PROJECT**, or having to replace defective materials.

The CMAR shall be entitled to a claim for an extension of time when a delay or hindrance is caused by an Act of God, or any act or omission on the part of the Owner, provided the CMAR gives notice to the Owner within fifteen (15) calendar days of the occurrence of the event giving rise to the claim and having stated the general nature of the claim. The CMAR's sole remedy for such delays or hindrance shall be an extension of Contract Time.

No extension of Contract Time or increases in the GMP shall be granted for any delay caused either by (1) inadequate crewing, default or bankruptcy of lower tier contract, slow submittals, etc., (2) by severe though not unusual weather conditions (other than hurricanes and tornadoes), (3) any delay impacting a portion of the Work within the available total float or slack time and not necessarily preventing completion of the Work within the Contract Time unless otherwise agreed to by the Owner in its sole discretion, (4) for any delay which is caused by the CMAR having to replace defective material, or (5) delays attributable to the lack of performance by subcontractors regardless of the reasons.

ARTICLE 9 INSURANCE

The CMAR shall, on a primary basis and at its sole expense, agree to maintain in full force and effect at all times during the life of this Agreement, insurance coverage and limits, including endorsements, as described herein. The requirements contained herein, as well as Owner's review or acceptance of insurance maintained by the CMAR are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CMAR under the Agreement.

The parties agree and recognize that it is not the intent of the City of Port St. Lucie that any insurance policy/coverage that it may obtain pursuant to any provision of this Agreement will provide insurance coverage to any entity, corporation, business, person, or organization, other than the City of Port St. Lucie and the City shall not be obligated to provide any insurance coverage other than for the City of Port St. Lucie or extend its immunity pursuant to section 768.28, Florida Statutes, under its self-insured program. Any provision contained herein to the contrary shall be considered void and unenforceable by any party. This provision does not apply to any obligation imposed on any other party to obtain insurance coverage for this project, and/or any obligation to name the City of Port St. Lucie as an additional insured under any other insurance policy or otherwise protect the interests of the City of Port St. Lucie as specified in this Agreement.

1. Workers' Compensation Insurance & Employer's Liability: The CMAR shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with section 440, Florida Statutes. Employers' Liability must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, and \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement must be provided. Coverage shall apply on a primary basis. Should scope of work performed by the CMAR qualify its employee(s) for benefits under Federal Workers' Compensation Statute (for example, U.S. Longshore & Harbor Workers Act or Merchant Marine Act), proof of appropriate Federal Act coverage must be provided.
2. Commercial General Liability Insurance: The CMAR shall agree to maintain Commercial General Liability insurance, issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products/completed operations aggregate	\$2,000,000
General aggregate	\$2,000,000
Fire damage	\$100,000 any 1 fire
Medical expense	\$10,000 any 1 person

3. Additional Insured: An Additional Insured endorsement **must** be attached to the certificate of insurance (should be CG2026) under the General Liability policy. Coverage is to be written on an occurrence form basis and shall apply as primary and non-contributory. Defense costs are to be in addition to the limit of liability. A waiver of subrogation is to be provided in favor of the Owner. Coverage shall extend to independent consultants and fellow employees. Contractual Liability is to be included. Coverage is to include a cross

liability or severability of interests provision as provided under the standard ISO form separation of insurers clause.

Except as to Workers' Compensation, Employers' Liability, and Professional Liability Insurance, Certificates of Insurance and policies shall clearly state that coverage required by the Contract has been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents, and employees as Additional Insured for Commercial General Liability and Business Auto Liability policies. The name for the Additional Insured endorsement issued by the insurer shall read: **"City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents shall be listed as additional insured and shall include Contract #20250012 – Tradition Regional Park – Adaptive Wheel Park Facility."** Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance. The policies shall be specifically endorsed to provide thirty (30) days written notice to the Owner prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. Formal written notice shall be sent to City of Port St. Lucie, 121 SW Port St. Lucie Blvd., Port St. Lucie, FL 34984, Attn: Procurement. In the event that the statutory liability of the Owner is amended during the term of this Agreement to exceed the above limits, the CMAR shall be required, upon thirty (30) days written notice by the Owner, to provide coverage at least equal to the amended statutory limit of liability of the Owner. Copies of the Additional Insured endorsement shall be attached to the Certificate of Insurance.

4. Business Automobile Liability Insurance: The CMAR shall agree to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000.00 each accident covering any auto, owned, non-owned and hired automobiles. In the event the CMAR does not own any automobiles, the Business Auto Liability requirement shall be amended allowing CMAR to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. Certificate holder must be listed as additional insured. A waiver of subrogation must be provided. Coverage shall apply on a primary and non-contributory basis.
5. Professional Liability Insurance: CMAR shall agree to maintain Professional Liability, or equivalent Errors & Omissions Liability, at a limit of liability not less than \$2,000,000 Per Occurrence. When a self-insured retention (SIR) or deductible exceeds \$10,000, the Owner reserves the right, but is not obligated, to review and request a copy of CMAR's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, CMAR warrants that the retroactive date equals or precedes the effective date of this Agreement. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this Agreement, CMAR shall agree to purchase a SERP with a minimum reporting period not less than four (4) years. If the policy contains an exclusion for dishonest or criminal acts, defense coverage for the same shall be provided.
6. Waiver of Subrogation: By entering into this Agreement, the CMAR agrees to a Waiver of Subrogation for each required policy. When required by the insurer or should a policy condition not permit an Insured to enter into a pre-loss contract to waive subrogation without an endorsement, then the CMAR shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its

equivalent.

7. Deductibles: All deductible amounts shall be paid for and be the responsibility of the CMAR for any and all claims under this Agreement. Where an SIR or deductible exceeds \$5,000, the Owner reserves the right, but is not obligated, to review and request a copy of the CMAR's most recent annual report or audited financial statement.

It shall be the responsibility of the CMAR to ensure that all independent contractors and/or subcontractors comply with the same insurance requirements referenced herein. It will be the responsibility of the CMAR to obtain Certificates of Insurance from all independent contractors and subcontractors listing the Owner as an Additional Insured without the language, "when required by written contract." If the CMAR, any independent contractors, and/or any subcontractors maintain higher limits than the minimums listed above, the Owner requires and shall be entitled to coverage for the higher limits maintained by the CMAR/independent contractor/subcontractor.

The CMAR may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employers' Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employers' Liability. When required by the insurer, or when Umbrella or Excess Liability is written on Non-Follow Form, the Owner shall be endorsed as an "Additional Insured."

The Owner, by and through its Risk Management Department, reserves the right, but is not obligated, to review, modify, reject, or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Agreement. All insurance carriers must have an AM Best rating of at least A:VII or better.

A failure on the part of the CMAR to execute the Agreement and/or punctually deliver the required insurance certificates and other documentation may be cause for annulment of the award.

ARTICLE 10.

FORCE MAJEURE, FIRE, OR OTHER CASUALTY

10.01 Force Majeure.

(1) Delays in any performance by any party contemplated or required hereunder due to: fire, flood, earthquake or hurricane, Acts of God, war, declaration of hostilities, revolt, civil strife, altercation or commotion, strike, labor dispute, or epidemic, or any law, order, proclamation, regulation or ordinance of any government or any subdivision thereof, or for any other similar cause to those enumerated, beyond the reasonable control and which with due diligence could not have been reasonably anticipated and without the fault or negligence of the party seeking excuse from performance, shall be deemed to be events of Force Majeure and any such delays shall be excused. In the event such party is delayed in the performance of any work or obligation pursuant to this Agreement for any of the events of Force Majeure and any such delays shall be excused. In the event such party is delayed in the performance of any work or obligation pursuant to this Agreement for any of the events of Force Majeure, the date for performance

required or contemplated by this Agreement shall be extended by the number of calendar days such party is actually delayed in such substantial completion.

(2) The party seeking excuse for nonperformance on the basis of Force Majeure shall promptly give written notice to the Owner, if with respect to the CMAR, or to the CMAR, if with respect to the Owner, specifying its actual or anticipated duration, and at least every-other-day thereafter, if such delay shall be continuing, written notice stating whether the condition continues and giving its actual or then anticipated duration. Each party seeking excuse from nonperformance on the basis of Force Majeure shall use its best efforts to rectify any condition causing a delay and will cooperate with the other party, except that neither party shall be obligated to incur any unreasonable additional costs and expenses, to overcome any loss of time that has resulted.

10.02 Casualty; Actions by Owner and CMAR. During the Contract Period, if the **PROJECT**, or any part thereof, shall have been damaged or destroyed, in whole or in part, the CMAR shall promptly make proof of loss and Owner and CMAR shall proceed promptly to collect, or cause to be collected, all valid claims which may have arisen against insurers or others based upon such damage or destruction. The CMAR shall diligently assess the damages or destruction and shall prepare an estimate of the cost, expenses and other changes, including normal and ordinary compensation to the CMAR, necessary for reconstruction of the **PROJECT** substantially in accordance with the Project Plans and Specifications. Within fifteen (15) calendar days following satisfaction of the express conditions described in subsections (1), (2) and (3) below, the CMAR covenants and agrees to diligently commence reconstruction and to complete the reconstruction or repair of any loss or damage by fire or other casualty to the **PROJECT** to substantially the same size, floor area, cubic content, and general appearance as prior to such loss or damage:

(1) receipt by the Owner of the proceeds derived from collection of all valid claims against insurers or others based upon such damage or destruction; and receipt of other sums from any source such that the funds necessary to pay the GMP and any additions to the GMP necessitated for repair or reconstruction are available;

(2) written agreement executed by the CMAR and the Owner, by amendment to this Agreement or otherwise, authorizing and approving the repair or reconstruction and any additions to the GMP necessitated thereby; and

(3) final approval by the Owner of the Project Plans and Specifications for such repair or reconstruction and issuance of any required Building Permit.

10.03 Approval of Plans and Specifications. The Owner agrees to approve the plans and specifications for such reconstruction or repair if the reconstruction or repair contemplated by such plans and specifications is economically feasible, and will restore the **PROJECT**, or the damaged portion thereof, to substantially the same condition as prior to such loss or damage and such plans and specifications conform to the applicable laws, ordinances, codes, and regulations. The Owner agrees that all proceeds of any applicable insurance or other proceeds received by the Owner or the CMAR as a result of such loss or damage shall be used solely for payment of the costs, expenses, and other charges of the reconstruction or repair of the **PROJECT**.

10.04 Notice of Loss or Damage. The CMAR shall promptly give the Owner written notice

of any significant damage or destruction to the **PROJECT**, defined as loss or damage which it is contemplated by CMAR will increase the GMP or extend the date of substantial completion, stating the date on which such damage or destruction occurred, the then expectations of CMAR as to the effect of such damage or destruction on the use of the **PROJECT**, and the then proposed schedule, if any, for repair or reconstruction of the **PROJECT**. Loss or damage which the CMAR determines will not affect the GMP or date of substantial completion will be reported to Owner immediately and associated corrective actions will be undertaken without delay.

ARTICLE 11 INDEMNIFICATION

11.01 Indemnification by CMAR. The CMAR agrees to indemnify, defend, and hold harmless, the Owner, its officers, agents, and employees from, and against any and all claims, actions, liabilities, losses and expenses including, but not limited to, attorney's fees for personal, economic, or bodily injury, wrongful death, loss of or damage to property, at law or in equity, which may arise or may be alleged to have risen from the negligent acts, errors, omissions or other wrongful conduct of the CMAR, agents, laborers, subcontractors or other personnel entity acting under the CMAR's control in connection with the CMAR's performance of services under this Agreement. To that extent, the CMAR shall pay any and all such claims and losses and shall pay any and all such costs and judgments which may issue from any lawsuit arising from such claims and losses including wrongful termination or allegations of discrimination or harassment, and shall pay all costs and attorney's fees expended by the Owner in defense of such claims and losses, including appeals. That the aforesaid hold-harmless agreement by the CMAR shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations of the CMAR or any agent laborers, subcontractors, or employee of the CMAR regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages. The CMAR shall be held responsible for any violation of laws, rules, regulations, or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by the CMAR on the work. This indemnification shall survive the termination of this Agreement.

The CMAR shall assume all risk and bear any loss or injury to property or persons occasioned by neglect or accident during the progress of work until the same shall have been completed and accepted. The CMAR agrees to repair, restore, or rebuild any damages it causes to any property of the Owner. The CMAR shall also assume all blame or loss by reason of neglect or violation of any state or federal law or municipal rule, regulation, or order. The CMAR shall give to the proper authorities all required notices relating to the work and obtain all official permits and licenses. It shall repair any damage that may have occurred to any adjoining building, structure, utility, or private property in the course of the work.

11.02 Consequential Damages. The CMAR and Owner waive claims against each other for consequential damages arising out of or relating to this Agreement with the limited exception of liquidated damages as provided in Section 4.07 of this Agreement. This mutual waiver includes:

- (1) Damages incurred by the Owner for rental expenses, for losses of use, income,

- profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- (2) Damages incurred by the CMAR for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

11.03 Sovereign Immunity. Nothing contained in this Agreement shall be deemed or otherwise interpreted as waiving the Owner's sovereign immunity protections existing under the laws of the State of Florida, or as increasing the limits of liability as set forth in [section 768.28, Florida Statutes](#).

ARTICLE 12. DEFAULT; TERMINATION

12.01 Termination by Owner Without Cause. The Owner reserves the exclusive right to terminate this Agreement without cause as provided herein. In the event that Owner exercises this right of termination, Owner shall provide thirty (30) days written notice to CMAR of termination and the termination shall become effective upon the date specified in the written notice. The following shall apply to each particular circumstance:

(1) Termination Based Upon Abandonment, Casualty or Force Majeure. If (i) Owner abandons the **PROJECT** (which for purposes of this paragraph shall mean the cessation of all construction and other activities relating to the **PROJECT**, excluding those which are necessary to wind down or otherwise terminate all outstanding obligations with respect to the **PROJECT**, and no recommencement of same within twelve (12) months following the date of termination), or (ii) the **PROJECT** is stopped for a period of sixty (60) consecutive calendar days due to an instance of Force Majeure or the result of a casualty resulting in a loss that cannot be corrected or restored within one-hundred and twenty (120) calendar days (excluding the time required to assess the damage and complete the steps contemplated), the Owner shall have the right to terminate this Agreement and pay the CMAR its compensation earned or accrued to date and all direct costs actually expended prior to City's notice of termination under this paragraph. CMAR shall immediately cease purchasing or accruing payment upon such notice of termination, unless necessary for the protection of the work already performed or safety and welfare of the public.

(2) Owner's Termination for Owner Convenience. Notwithstanding anything contained herein to the contrary, Owner may, without cause, terminate this Agreement at any time upon delivery of written notice to the CMAR. In the event Owner delivers such notice to the CMAR, CMAR agrees to withdraw its employees and its equipment, if any, from the work site on the effective date of the termination as specified in said notice (which effective date shall not be less than two (2) business days after the date of delivery of the notice), regardless of any claim the CMAR may or may not have against the Owner. In the event of such termination, CMAR shall be entitled to any unpaid Cost of the **PROJECT** incurred to the effective date of such termination, and to no compensation other than the fees owed or accrued through the date of termination and all direct costs actually expended prior to City's notice of termination under this paragraph. CMAR shall immediately cease purchasing or accruing payment upon such notice of termination, unless necessary for the protection of the work already performed or safety and welfare of the public.

12.02 Owner's Right to Perform CMAR's Obligations and Termination by Owner for Cause.

(1) If the CMAR fails to timely perform any of his obligations under this Agreement, including any obligation the CMAR assumes to perform work with its own forces, the Owner may, after seven (7) calendar days' written notice, during which period the CMAR fails to perform such obligation, make good such deficiencies and perform such actions. The GMP, or the actual cost of the **PROJECT**, whichever is less, shall be reduced by the cost to the Owner of making good such deficiencies and the CMAR's compensation shall be reduced by an amount required to manage the deficiencies, provided, however, nothing contained herein shall limit or preclude Owner from pursuing additional damages from CMAR as a result of its breach.

(2) If the CMAR is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors or if a receiver is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or fails, without being excused, to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls thirty (30) calendar days or more behind schedule), or if it fails to make prompt payment to subcontractors for materials or labor, or disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of substantial violations of a provision of the Agreement, then the Owner may, without prejudice to any other right or remedy, and after giving the CMAR and its surety, if any, fourteen (14) calendar days' written notice, and during which period the CMAR fails to cure the violation, terminate the employment of the CMAR and take possession of the Project Site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by the CMAR, and may finish the **PROJECT** by whatever method the Owner may deem expedient. In such case, the CMAR shall not be entitled to receive any further payment. Owner shall be entitled to recover all costs and damages arising as a result of failure of CMAR to perform as provided in this Agreement, as well as reasonable termination expenses and costs and damages incurred by the Owner may be deducted from any payments left owing the CMAR.

12.03 Obligations, Rights and Remedies Cumulative. The specific rights and remedies the Owner is entitled are not exclusive and are intended to be in addition to any other remedies or means of redress to which the Owner may lawfully be entitled and are not specifically prohibited by this Agreement.

12.04 Non-Action on Failure to Observe Provisions of This Agreement. The failure of the Owner or the CMAR, respectfully, to promptly insist upon strict performance of any terms, covenant, condition, or provision of this Agreement or any Exhibit shall not be deemed a waiver of any right or remedy that the Owner or the CMAR, respectively, may have, and shall not be deemed a waiver of any subsequent default or nonperformance of such term, covenant, condition or provision.

12.05 Litigation. All claims, disputes, or other matters in question between the Owner and the CMAR, arising under the terms of this Agreement and performance hereunder shall be decided by a court of competent jurisdiction, and shall not be the subject of arbitration. The parties agree that with respect to any Agreements executed by and between themselves relating to the **PROJECT** and any other persons or entities performing work on the

PROJECT, that such agreements will contain a provision such that any disputes shall be resolved in a court of competent jurisdiction, it being the intention of all parties that any dispute be resolved in one consistent forum.

Both parties hereby freely, voluntarily, and expressly, waive their respective rights to trial by jury on any issues so triable after having the opportunity to consult with an attorney.

12.06 Attorney's Fees. In any litigation between the parties hereto arising out of this Agreement, both parties waive the right to seek attorney's fees from the other party. Even if a party is entitled to attorney's fees under a law, rule, statute, or otherwise, both parties expressly waive any such right.

ARTICLE 13. MISCELLANEOUS

13.01 Harmony. CMAR is advised and hereby agrees that it will exert every reasonable and diligent effort to assure that all labor employed by it and its subcontractors for work on the **PROJECT** shall work in harmony with and be compatible with all other labor being used by building and construction contractors now or hereafter on the site of the **PROJECT**. CMAR further agrees that this provision will be included in all subcontracts of the subcontractors as well as the CMAR's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge on account of membership or non-membership in any labor union or labor organization, or the right of any person to work of the Florida Constitution. Owner's liability for obligations, commitments, and unsettled contract claims in the event of termination of this Agreement, shall be limited in accordance with an agreed to subcontract termination clause approved by Owner.

13.02 Ownership of Products and Documents. All documents, reports, analysis maps, blueprints, drawings and other papers and products prepared or received by CMAR in connection with this Agreement ("CMAR's work"), upon payment by Owner of fees accrued and owing at the time of CMAR's work shall be the property of Owner and Owner shall have the right to use CMAR's work subsequently without restriction or limitation.

13.03 Successors and Assignment. No transfer or assignment of the rights and/or obligations of Owner under this Agreement shall be effective without the written consent of the CMAR. No transfer or assignment of the rights and/or obligations of the CMAR under this Agreement shall be effective without the written consent of the Owner. The terms herein contained shall bind and inure to the benefit of the Owner, its successors and assigns, and the CMAR, its successors and assigns, except as may be otherwise specifically provided herein.

13.04 Notices. All notices, demands, requests for approvals or other communications which may be or are required to be given by either party to the other in writing shall be deemed given and delivered on the date received by the person listed below or the Authorized Representative, or, if notice is by mail, on the date mailed to the address below or, if by hand delivery, on the date delivered to the address below:

To the CMAR:

Action Sports Design, LLC

Mike McIntyre, President
124000 W. Hwy 71, Suite 350-348
Austin, TX 78738
C: 512-221-8036
Email: mike@actionsportsdesign.com

City Contract Administrator:

Alaina Knofla
Acting Procurement Manager
121 SW Port St. Lucie Boulevard
Port St. Lucie, FL 34984-5099
772-871-7612 / FAX 772-871-7337
E-mail: aknofla@cityofpsl.com

City Project Coordinator:

Zakariya Sherman, Executive Project Manager
Parks & Recreation Department
2195 SE Airoso Blvd.
Port St. Lucie, Florida 34984
O:772-871-5083/C:772-206-1610
E-mail: zsherman@cityofpsl.com

The addresses to which notice is to be sent may be changed from time to time by a written notice delivered to each party to this Agreement. Until notice of change of address is received, a party may rely upon the last address given.

13.05 Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the requirements of applicable laws and if the remainder of this Agreement can substantially be reasonably performed without material hardship, so as to accomplish the intent and the goals of the parties hereto.

13.06 Applicable Law and Construction. The laws of the State of Florida shall govern the validity, performance, and enforcement of this Agreement. This Agreement has been negotiated by the Owner and the CMAR, and this Agreement, including the Exhibits, shall not be deemed to have been prepared by either the Owner or the CMAR, and each of them shall be deemed to have participated equally in the preparation hereof.

13.07 Submission to Jurisdiction.

(1) Each party to this Agreement hereby submits to the Jurisdiction of the courts of the State of Florida with venue in St. Lucie County, Florida, for the purposes of any suit, action, or other proceeding arising out of or related to this Agreement and hereby agrees not to assert by way of a motion as a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts.

(2) The present registered agent of Action Sports Design, LLC is Registered Agents Inc., with an address of 7901 4th Street North, Suite 300, St. Petersburg, FL 33702. If at any time during the term of this Agreement, the CMAR is not a resident of the State of Florida or has no partner, officer, employee or agent thereof available for service of process

as a resident of the State of Florida, or if any permitted assignee thereof shall be a foreign corporation, partnership or other entity or shall have no officer, employee or agent available for service of process in the State of Florida, CMAR hereby designates the Secretary of State, State of Florida, its agent for the service of process in any court action between it and the Owner, arising out of or related to this Agreement and such service shall be made as provided by the laws of the State of Florida for service upon a nonresident; provided, however, that at the time of service on the Secretary of State, a copy of such service shall be mailed by prepaid, registered mail, return receipt requested, to the CMAR at the address for notices.

13.08 Estoppel Certificates. The CMAR and the Owner shall at any time and from time to time, upon not less than twenty-one (21) calendar days prior notice by the other party, execute, acknowledge, and deliver to the other a statement certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications that the same as modified is in full force and effect and setting forth such modifications), the dates to which any changes have been paid in advance, if any, and, to the knowledge of such party, neither it nor the other party is then in default hereof, it being intended that any such statement delivered may be relied upon by any prospective purchaser, mortgagee, assignee of any mortgage or assignee of the respective interests in the **PROJECT**, if any, of either party made in accordance with the provisions of this Agreement.

13.09 Complete Agreement. The written form of this Agreement and the Exhibits supersede and control over any and all prior agreements, understandings, representations and statements, whether written or oral, made with regard to the matters addressed by this Agreement.

13.10 Captions. The section headings and captions of this Agreement and the table of contents preceding this Agreement are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Agreement, or any part thereof, or in any way affect this Agreement, or construe any article or section hereof.

13.11 Holidays. It is hereby agreed and declared that whenever the time period for a notice or performance under the terms of this Agreement is seven (7) days or greater, and would be made or given or done on a Saturday or Sunday or on a legal holiday observed by the City Council of the City of Port St. Lucie, Florida, it shall be postponed to the next following business day, not a Saturday, Sunday or legal holiday.

13.12 Exhibits. Each Exhibit referred to in and attached to this Agreement is an essential part of this Agreement. The Exhibits, and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement.

13.13 Nondiscrimination.

The CMAR shall not discriminate against any person in its operations, activities, or delivery of services under this Agreement. The CMAR shall affirmatively comply with all applicable provisions of federal, state, and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

13.14 No General Obligation. In no event shall any obligation of the Owner under this Agreement be or constitute a pledge of the ad valorem taxing power of the Owner within the meaning of the Constitution of the State of Florida or any other applicable laws. Neither the CMAR nor any other party under or beneficiary of this Agreement shall ever have the right to compel the exercise of the ad valorem taxing power of the Owner, in any form on any real or personal property to pay the Owner's obligations or undertakings hereunder.

13.15 Members of the Owner Not Liable. No covenant, stipulation, obligation, or agreement contained herein shall be deemed to be a covenant, stipulation, obligation, or agreement of any present or future member of the City Council or agent or employee of the Owner in its, his, her, or their individual capacity, and neither the members of the City Council of the Owner, nor any official executing this Agreement, shall be liable personally or shall be subject to any accountability by reason of the execution by the Owner of this Agreement or any act pertaining hereto.

13.16 Relationship of the Parties. No party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by the other party to third parties, and nothing in this Agreement shall be deemed to contemplate either party as a partner, agent, or local representative of the other party, or relationship between the parties or to create the relationship of employer/employees.

13.17 Maintenance of Records. The CMAR and any subcontractors shall comply with section 119.0701, Florida Statutes. The CMAR and any subcontractors are to allow public access to all documents, papers, letters, or other material made or received by the CMAR in conjunction with this Agreement, unless the records are exempt from Article I, section 24(a), Florida Constitution, and section 119.07(1)(a), Florida Statutes. Pursuant to section 119.10(2)(a), Florida Statutes, any person who willfully and knowingly violates any of the provisions of Ch. 119, Laws of Fla., commits a misdemeanor of the first degree, punishable as provided in sections 775.082 and 775.083, Florida Statutes.

RECORDS

The City of Port St. Lucie is a public agency subject to chapter 119, Florida Statutes. The CMAR shall comply with Florida's Public Records Law. THE CMAR'S RESPONSIBILITY FOR COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES. Pursuant to section 119.0701, Florida Statutes, the CMAR agrees to comply with all public records laws, specifically to:

Keep and maintain public records required by the City in order to perform the service.

1. 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 and GS2 for Criminal Justice Agencies and District Medical Examiners.](#)
2. During the term of the Agreement, the CMAR shall maintain all books, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this Agreement. The form of all records and reports shall be subject to the approval of the Owner.

3. Records include 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 Owner. The CMAR's records under this Agreement include, but are not limited to, supplier/subcontractor invoices and contracts, project documents, meeting notes, emails, and all other documentation generated during this Agreement.
4. The CMAR agrees to make available to the Owner, during normal business hours, all books of account, reports, and records relating to this Agreement.
5. A contractor who fails to provide the public records to the Owner within a reasonable time may also be subject to penalties under section 119.10, Florida Statutes.

Upon request from the Owner's custodian of public records, provide the public agency 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.

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 CMAR does not transfer the records to the Owner.

Upon completion of the Agreement, transfer, at no cost to the Owner, all public records in possession of the CMAR, or keep and maintain public records required by the Owner to perform the service. If the CMAR transfers all public records to the Owner upon completion of the Agreement, the CMAR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CMAR keeps and maintains public records upon completion of the Agreement, the CMAR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Owner, upon request from the Owner's custodian of public records in a format that is compatible with the information technology systems of the City.

IF THE CMAR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CMAR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CITY CLERK
121 SW Port St. Lucie Blvd.
Port St. Lucie, FL 34984 (772)
871 5157
pr@cityofpsl.com**

13.18 Audits. The CMAR shall establish and maintain a reasonable accounting system that enables the Owner to readily identify the CMAR's assets, expenses, costs of goods, and use of funds throughout the term of the Agreement for a period of at least seven (7) years following the date of final payment or completion of any required audit, whichever is later. Records shall include, but are not limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. The CMAR shall permit the Owner's authorized auditor or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and to make copies of all books, documents, papers, electronic or optically stored and created records, or other records relating or pertaining to this Agreement kept by or under the control of the CMAR, including, but not limited to, those kept by the CMAR, its employees, agents, assigns, successors, and subcontractors. Such records shall be made available to the Owner during normal business hours at the CMAR's office or place of business. The CMAR shall not impose a charge for audit or examination of the CMAR's books and records. If an audit discloses incorrect billings or improprieties, the Owner reserves the right to charge the CMAR for the cost of the audit and appropriate reimbursement. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the CMAR's invoices and/or records shall be made within a reasonable amount of time (not to exceed ninety (90) days) from presentation of the Owner's findings to the CMAR. Evidence of criminal conduct will be turned over to the proper authorities.

The CMAR shall also ensure the Owner has these rights with the CMAR's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the CMAR and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the CMAR's obligations to the Owner.

13.19 Scrutinized Companies. By entering into this Agreement with the Owner, the CMAR certifies that it and those related entities of the CMAR, as defined by Florida law, are not on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, and are not engaged in a boycott of Israel. The Owner may terminate this Agreement if the CMAR or any of those related entities of the CMAR, as defined by Florida law, are found to have submitted a false certification or any of the following occur with respect to the company or a related entity: (i) it has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, or (ii) for any contract for goods or services of one million dollars or more, it has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or it is found to have been engaged in business operations in Cuba or Syria. Notwithstanding the preceding, the Owner reserves the right and may, in its sole discretion, on a case by case basis, permit a company on such lists or engaged in business operations in Cuba or Syria to be eligible for, bid on, submit a proposal for, or enter into or renew a contract for goods or services of one million dollars

or more, or may permit a company on the Scrutinized Companies that Boycott Israel List to be eligible for, bid on, submit a proposal for, or enter into or renew a contract for goods or services of any amount, should the Owner determine that the conditions set forth in section 287.135(4), Florida Statutes, are met.

13.20 Discriminatory, Convicted, and Antitrust Violator Vendor

Lists. The CMAR certifies that neither it nor any of its affiliates, as defined in the statutes below, have been placed on the discriminatory vendor list under section 287.134, Florida Statutes; the convicted vendor list under section 287.133, Florida Statutes; or the antitrust violator vendor list under section 287.137, Florida Statutes. Absent certain conditions under these statutes, neither contractors nor their affiliates, as defined in the statutes, who have been placed on such lists may submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

13.21 Cooperation with Inspector General. Pursuant to section 20.055, Florida Statutes, it is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section. The CMAR understands and will comply with this statute.

13.22 E-Verify. In accordance with section 448.095, Florida Statutes, the CMAR agrees to comply with the following:

1. The CMAR must register with and use the E-Verify system to verify the work authorization status of all new employees of the CMAR. The CMAR must provide the Owner with sufficient proof of compliance with this provision before beginning work under this Agreement.
2. If the CMAR enters into a contract with a subcontractor, the CMAR must require each and every subcontractor to provide the CMAR with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The CMAR shall maintain a copy of each and every such affidavit(s) for the duration of the Agreement and any renewals thereafter.
3. The Owner shall terminate this Agreement if it has a good faith belief that a person or an entity with which it is contracting has knowingly violated section 448.09(1), Florida Statutes.
4. The CMAR shall immediately terminate any contract with any subcontractor if the CMAR has, or develops, a good faith belief that the subcontractor has violated section 448.09(1), Florida Statutes. If the Owner has or develops a good faith belief that any subcontractor of the CMAR knowingly violated section 448.09(1), Florida Statutes, or any provision of section 448.095, Florida Statutes, the Owner shall promptly notify the CMAR and order the CMAR to immediately terminate the contract with the subcontractor.
5. The Owner shall terminate this Agreement for violation of any provision in this section. If the Agreement is terminated under this section, it is not a breach of contract and may not be considered as such. If the Owner terminates this Agreement

- under this section, the CMAR may not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. A contractor is liable for any additional costs incurred by the City as a result of the termination of a contract.
6. The Owner, CMAR, or any subcontractor may file a cause of action with a circuit or county court to challenge a termination under section 448.095(5)(c), Florida Statutes, no later than twenty (20) calendar days after the date on which the Contract was terminated. The parties agree that such a cause of action must be filed in St. Lucie County, Florida, in accordance with the Venue provision herein.

Signature Page to Follow

IN WITNESS WHEREOF, the parties have executed this Agreement, the day and year first above written.

CITY OF PORT ST. LUCIE, FLORIDA

ACTION SPORTS DESIGN, LLC

By: _____

By: [Signature]

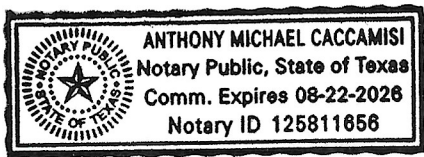
Purchasing Agent

Authorized Representative

NOTARIZATION AS TO AUTHORIZED REPRESENTATIVE'S EXECUTION

STATE OF TEXAS)
) ss
COUNTY OF TRAVIS)

The foregoing instrument was acknowledged before me by ☒ physical presence or [] online notarization, this 13 day of JUNE, 2025, by MICHAEL MCINTYRE who is [] personally known to me, or who has ☒ produced the following identification:
TEXAS DRIVER'S LIC



NOTARY SEAL/STAMP

[Signature]

Signature of Notary Public

ANTHONY CACCAMISI

Print Name of Notary Public

Notary Public, State of ~~Florida~~ TEXAS

My Commission expires: 08/22/26

EXHIBIT A – PROJECT SCHEDULE

1.0 MOBILIZATION AND SITE PREPARATION (21 days)

ASD shall provide all labor, equipment, tools, and supervision for mobilization and site preparation for the specialty build construction:

- A. Jobsite Trailer and Storage Containers.
- B. Site Survey-Staking and Layout of specialty construction limit of work.
- D. Equipment- rentals and delivery.
- E. Water hoses, trash containers and specialty power tools and tables.

2.0 STORM DRAINAGE INSTALLATION-SPECIALTY LIMIT OF WORK (21 days)

ASD shall provide all drain line installation oversight, coordination per plans and specifications.

- A. Coordination, review and approval by ASD Hired Civil Engineer: Kimley Horn.
- B. Storm drainage inlet locations to be located, marked and protected during construction.
- C. Storm drainage testing verifying positive flow and signed off by Civil.

3.0 DRAINAGE SURFACE SWALES SHAPING-SPECIALTY LIMIT OF WORK (7 days)

ASD shall provide all drain swale oversight, coordination per plans and specifications.

- A. Coordination, review and approval by ASD Hired Civil Engineer: Kimley Horn.
- B. Storm drainage swale testing verifying positive flow and signed off by Civil.

4.0 ELECTRICAL CONDUIT TO POWER AND OUTLETS-SPECIALTY LIMIT OF WORK (7 days)

ASD shall provide all electrical conduit to power oversight, coordination and installation per Electrical plans and specifications.

- A. Coordination, review and approval by ASD Hired Electrical Engineer: Quantum.
- B. Necessary Electrical permits will be obtained by ASD hired electrical contractor.

5.0 1.5" FDOT AGGREGATE BASE COURSE- (21 days)

ASD shall provide all labor, equipment, tools, and supervision to perform the construction of the specified profile thickness under entire racetrack, start hill, jump lines, pump track and staging area:

- A. Aggregate Base Rock-1 1/2"- Foundation Layer-6"
- B. Minimum base compaction of 95%
- C. Provide compaction testing results in at least two areas for track, two for pump track, two for jump lines, two for staging, two for start hill area.

6.0 SPECIALTY RACETRACK-PUMP TRACK-FLOW LINE TEMPLATES- (14 days)

ASD shall provide custom CNC cut pine wood templates to the exact finish grade of entire riding surface areas for precision. All profiles are proprietary with formulas for riders to flow from start to finish of their lines.

- A. 3/4" steel form rods installed at coordinate points of intersection.
- B. 3D Printed custom brackets for template and stake connections.
- C. Site Surveying of points and final elevations on templates will be set.

7.0 3/4"-AGGREGATE BASE COURSE-1' LIFTS COMPACTED TO 95% (21 days)

ASD shall provide all labor, equipment, tools, and supervision to perform the construction of all aggregate base jump and profile shaping. ABC shall meet the bottom elevation of custom cut forms.

- A. ASD to provide 3rd party compaction testing.
- B. Aggregate base profile to be final plate compacted prior to rebar.

- 8.0 #3 REBAR 18" ON CENTER-SPEED DOWELS-START STOP FORMS (21 days)**
ASD shall provide all labor, equipment, tools, and supervision to perform the construction of all rebar reinforcing, dowel connections at start stop locations.
- A. Provide 3rd Party rebar inspections prior to any concrete pouring.
- 9.0 RACETRACK START HILL WALLS-FOOTINGS-ENG. FILL 2 (15 days)**
ASD shall provide all labor, equipment, tools, and supervision for the construction of the Racetrack start hill:
- A. Poured in place formed walls-forms to match exact profiles of ramps and start hill.
B. 1.5" aggregate base roc fill compacted in lifts.
C. Third party compaction testing to 95% prior to final forms and rebar.
- 10.0 RACETRACK START HILL-CONCRETE TROUGH BOX (7 days)**
ASD shall provide all labor, equipment, tools, and supervision for the construction of the ProGate start system.
- A. Plywood formed trough with support for start gate system.
B. Rebar-base rock-drain line-conduit pipes for lights and control connection.
C. Third party compaction testing to 95% prior to final forms and rebar.
- 11.0 CHANNEL DRAIN SYSTEM BOX AT BOTTOM OF HILL INSTALLATION (5 days)**
ASD shall provide all labor, equipment, tools, and supervision for installation of the channel drain system at bottom of start hill encased within concrete formed box.
- A. Channel Drain form, base material, pipe connection to ACO Drain System.
B. Rebar, concrete and light broom finish top.
C. Third party compaction testing to 95% prior to final forms and rebar.
- 12.0 START GATE SYSTEM CONDUIT-LOW VOLTAGE (3 days)**
ASD shall provide all labor, equipment, tools, and supervision to perform the placement of electrical conduit for start gate lights-low voltage system to start gate concrete trough.
- 13.0 START GATE SYSTEM INSTALLATION (5 days)**
ASD shall provide all labor, equipment, tools, and supervision to perform the placement and finish custom progate adaptive race system:
- A. Set gate system level in trough concrete box. Anchor per manuf. Specifications.
B. Run all cables to start gate system box and start lights at 30' mark on hill.
- 14.0 START HILL RAMP, DECKING, STAGING BACK RAMP (14 days)**
ASD shall provide all labor, equipment, tools, and supervision to perform the preparation and placement of all start hill ramps: front, top, back and accessible ramp:
- A. Final base rock compaction and testing.
B. #3 rebar 12" on center for start hill.
C. All start stop pour forms and dowels.

15.0 CONCRETE-SHOTCRETE APPLICATION (30 days)

ASD shall provide all labor, equipment, materials, and supervision to Install all concrete riding surfaces for the Adaptive Racetrack, Pump Track and Jump Lines per plans and specifications.

- A. Concrete Mix Design Certificates achieving over 4,000 PSI mix.
- B. All screeding, troweling, light broom finishing for all surfaced.
- C. 28 day cure period prior to any sport court surfacing installation.

16.0 CONCRETE STAGING AREA POURS (5 days)

ASD shall provide all labor, equipment, materials, and supervision to Install all concrete staging concrete flatwork per plans and specifications.

- A. Concrete Mix Design Certificates achieving over 3,000 PSI mix.
- B. All screeding, troweling, light broom finishing for all staging surfaces.
- C. 28-day cure period prior to any sport court surfacing logo installation.

17.0 SPECIALTY BUILD AREA POWER CONNECTION AND TESTING (3 days)

ASD shall provide all labor, equipment, materials, and supervision to test start gate system, power connections and verify photometrics from Musco Lighting on track per plans and specifications.

- A. Start Gate Power and operational testing.
- B. Power outlet connection testing.
- C. Photometric testing for track riding surfaces.

18.0 START HILL BARRIER BOARDS AND GUARD RAIL SYSTEMS (10 days)

ASD shall provide all labor, equipment, materials, and supervision to Install all medal fabrication staging barrier board frames and guardrail systems per plans and specifications.

- A. Barrier boards front of Racetrack start hill.
- B. Guardrail systems top and back of start hill and Accessible Ramp.
- C. 28-day cure period prior to any sport court surfacing logo installation.

19.0 TRUSS FRAMES START AND FINISH (2 days)

ASD shall provide all labor, equipment, materials, and supervision to Install all start hill and finish line truss frame systems per plans and specifications.

- A. Aluminum Start Hill Truss Frame System.
- B. Aluminum Finish Line Truss Frame System.

20.0 SHADE STRUCTURE SYSTEM FOR RACETRACK START HILL (5 days)

ASD shall provide all labor, equipment, materials, and supervision to Install all shade systems per plans and specifications for start hill shade structures (3).

- A. Poles and pole footing installation.
- B. Fabric shade installation to poles.

21.0 CONCRETE PAD AND UTILITIES FOR PRE-ENGINEERED RESTROOM (3 days)

ASD shall provide all labor, equipment, materials, and supervision for the installation of the concrete pad specified by pre-engineered restroom-admin-concession building and associated utilities needed to connect to building:

- A. Power, water, cable, sewer line connections to building pad locations required.
- B. Utilities inspection and approval.
- C. Pad base, rebar, collars and concrete slab pour.

22.0 PRE-ENGINEERED RESTROOM (or equal)-VERTICAL CONSTRUCTION (3 days)

ASD shall provide all labor, equipment, materials, and supervision for the installation for the pre-engineered restroom-admin-concession building and associated fixtures needed to complete the building:

- A. Walls, framing roofing installation.
- B. Fixtures-finishes-stalls installation
- C. Final doors, drinking fountain and utility hookup.
- D. Inspection and sign off

23.0 BICYCLE PLAY SPACE CONCRETE PAD-WALKWAYS (5 days)

ASD shall provide all labor, equipment, materials, and supervision to Install all concrete staging concrete flatwork per plans and specifications.

- A. Concrete Mix Design Certificates achieving over 3,000 PSI mix.
- B. All screeding, troweling, light broom finishing for all staging surfaces.
- C. 28-day cure period prior to any sport court surfacing logo installation.

24.0 SHADE STRUCTURE SYSTEM FOR BICYCLE PLAY SPACE (5 days)

ASD shall provide all labor, equipment, materials, and supervision to Install all shade systems per plans and specifications for bicycle play space (2).

- A. Poles and pole footing installation.
- B. Fabric shade installation to poles.

25.0 ALL TRACK SURFACING-SPORT COURT SPECIALTY ACRYLOTEX (14 days)

ASD shall provide all labor, equipment, materials, and supervision to Install all riding surface sport court specialty acrylotex surfacing per plans and specifications.

- A. Install approved blue track surface.
- B. Install all white lines and chevron directional arrows.
- C. Install City of Port St Lucie Logos on start hill, turns of racetrack and staging area.

26.0 STAGE-AMPHITHEATRE WALLS-STEPS AND RAILINGS (5 days)

ASD shall provide all labor, equipment, materials, and supervision to Install all concrete seat walls, steps, railings, concrete flatwork per plans and specifications.

- A. Concrete Mix Design Certificates achieving over 3,000 PSI mix.
- B. All screeding, troweling, light broom finishing for all surfaces.
- C. 28-day cure period prior to any metal coring for metal fabrications.

27.0 SHADE STRUCTURE SYSTEM FOR AMPHITHEATER (5 days)

ASD shall provide all labor, equipment, materials, and supervision to Install all shade systems per plans and specifications for amphitheater shade system per plans.

- A. Poles and pole footing installation.
- B. Fabric shade installation to poles.

28.0 PERIMETER WALKWAYS-BLEACHER PADS (5 days)

ASD shall provide all labor, equipment, materials, and supervision to Install all concrete staging concrete flatwork per plans and specifications.

- A. Concrete Mix Design Certificates achieving over 3,000 PSI mix.
- B. All screeding, troweling, light broom finishing for all staging surfaces.
- C. 28-day cure period prior to any sport court surfacing logo installation.

29.0 SHADE STRUCTURE SYSTEMS FOR BLEACHERS (5 days)

ASD shall provide all labor, equipment, materials, and supervision to Install all shade systems per plans and specifications for bleacher shade structures (4).

- A. Poles and pole footing installation.
- B. Fabric shade installation to poles.

30.0 PERIMETER TRACK CHAINLINK FENCING AND GATES (3 days)

ASD shall provide all labor, equipment, materials, and supervision for the installation of the 4' black vinyl coated chain link fencing, posts, footings and gates:

- A. Footings and posts
- B. Gate framing, hinges and hardware.
- C. Chain Link fencing fabric installed and secured.

31.0 INSTALL ALL SYNTHETIC TURF AREAS WITHIN THE SPECIALTY L.O.W. (15 days)

ASD shall provide all labor, equipment, materials, and supervision to Install all synthetic grass areas per plans and specifications.

- A. Concrete surfaces to receive custom headers to affix turf edging.
- B. Final grade to be plate compacted prior to any turf installation.

32.0 FINAL CONCRETE WALKS-ENTRY PLAZA-DROP OFF-BOLLARDS (5 days)

ASD shall provide all labor, equipment, materials, and supervision to Install all concrete walkways for entry plaza, drop off and bollards per plans and specifications.

- A. Concrete Mix Design Certificates achieving over 3,000 PSI mix.
- B. All screeding, troweling, light broom finishing for all staging surfaces.
- C. 28-day cure period prior to any sport court surfacing logo installation.

33.0 IRRIGATION SYSTEM INSTALLATION (5 days)

ASD shall provide all labor, equipment, materials, and supervision to Install all irrigation systems per plans and specifications.

- A. Mainlines, laterals, valves and wiring.
- B. Spray heads and drip systems per plans.
- C. Backfill and cleanup.

34.0 LANDSCAPE INSTALLATION (5 days)

ASD shall provide all labor, equipment, materials, and supervision to Install all landscape plants, mulch per plans and specifications.

- A. Specimen trees and palms.
- B. Shrubs and grasses
- C. Mulch and maintenance period start date.

35.0 SITE FURNISHINGS INSTALLATION (5 days)

ASD shall provide all labor, equipment, materials, and supervision to Install all site furnishings per the construction documents.

- A. Delivery, assembly, mounting and cleaning of final installed furnishings.
- B. Clean up of all packaging and any warranty items retained for CPSL.

36.0 PERIMETER SECURITY FENCING 6'-GATES-HARDWARE (5 days)

ASD shall provide all labor, equipment, materials, and supervision to Install all Security Fencing per plans and specifications.

- A. Fence Posts, footings.
- B. Wire fencing panels and attachments-brackets.
- C. All gate hardware. Keys to CPSL.

37.0 PROJECT CLEAN UP (3 days)

ASD shall provide all labor, equipment, materials, and supervision to perform final clean up-power washing and clean up for entire specialty build areas.

38.0 PROJECT CLOSE OUT-REVIEW WITH CITY STAFF (2 days)

ASD shall conduct and attend final walk-through and review with City staff for completion and start of maintenance period.

END OF SCOPE

EXHIBIT B – GMP (OWNER DIRECT PURCHASE OPTION

EXHIBIT B-BID TAB

Project: City of Port St Lucie, FL-Adaptive Racetrack
Prepared By: Action Sports Design, LLC
Date: 20-May-25



ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL	CDP
GENERAL CONDITIONS						
	Mobilization & General Conditions	1	LS	\$ 368,000.00	\$ 368,000.00	
	Project Bond-Payment and Performance Bond	1	LS	\$ 200,000.00	\$ 200,000.00	
					\$ 568,000.00	
EARTHWORK						
	FDOT Engineered Fill-Import-Aggregate Base Course 3/8" minus, includes trucking	14,000	CY	\$ 29.06	\$ 406,875.00	CDP
	Track-Pump-Jump-Flow Lines-Specialty Shaping-1' lifts maximum-95% compaction tested	1	LS	\$ 375,000.00	\$ 375,000.00	
					\$ 781,875.00	
STORM DRAINAGE						
	Drain Inlets-10" Nyloplast-Material-Installation-Inspection-Testing	1	LS	\$ 48,230.00	\$ 48,230.00	
	Drain Inlets-12" Nyloplast-Material-Installation-Inspection-Testing	1	LS	\$ 48,230.00	\$ 48,230.00	
	Drain Line-HDPE SD-10"-Material-Installation-Inspection-Testing	1	LS	\$ 48,230.00	\$ 48,230.00	
	Drain Line-HDPE SD-12"-Material-Installation-Inspection-Testing	1	LS	\$ 48,230.00	\$ 48,230.00	
	Drain Line-HDPE SD-15"-Material-Installation-Inspection-Testing	1	LS	\$ 48,230.00	\$ 48,230.00	
	Clean Out-Junction Box-24" Nyloplast-Material-Installation-Inspection-Testing	1	LS	\$ 48,230.00	\$ 48,230.00	
	Channel Drain-Nyloplast-ACO-Bottom of Start Hill-Material-Installation-Inspection-Testing	1	LS	\$ 48,230.00	\$ 48,230.00	
					\$ 337,610.00	
ACRYLIC SURFACING						
	Acrylic Sport Surface-Bicycle Learning Course	8,500	SF	\$ 1.25	\$ 10,625.00	
	Acrylic Sport Surface-Race Track Start Hill	2,177	SF	\$ 2.25	\$ 4,898.25	
	Acrylic Sport Surface-Racetrack	29,809	SF	\$ 2.25	\$ 67,070.25	
	Acrylic Sport Surface-Pump Track	8,600	SF	\$ 2.25	\$ 19,350.00	
	Acrylic Sport Surface-Jump Line	2,900	SF	\$ 2.25	\$ 6,525.00	
	4" Painted Acrylic Sport Striping-Race Track Start Hill	2,177	LF	\$ 1.25	\$ 2,721.25	
	4" Painted Acrylic Sport Striping-Racetrack	2,523	LF	\$ 1.25	\$ 3,153.75	
	4" Painted Acrylic Sport Striping-Pump Track	1,600	LF	\$ 1.25	\$ 2,000.00	
	4" Painted Acrylic Sport Striping-Jump Line	906	LF	\$ 1.25	\$ 1,132.50	
	City Logo Painted Acrylic Sport-Start Hill and 3 Turns	4	EA	\$ 650.00	\$ 2,600.00	
					\$ 120,076.00	
IRRIGATION SYSTEM						
	2" Irrigation Line -Schedule 40	1	LS	\$ 10,000.00	\$ 10,000.00	
	Irrigation System-Planting-Tree Drip-Grass Spray	1	LS	\$ 24,367.00	\$ 24,367.00	
					\$ 34,367.00	
LANDSCAPING						
	Trees	1	LS	\$ 23,200.00	\$ 23,200.00	
	Shrubs	1	LS	\$ 450.00	\$ 450.00	
	Grasses	1	LS	\$ 2,870.01	\$ 2,870.01	
	Mulch-Top Soil	1	LS	\$ 4,104.00	\$ 4,104.00	
					\$ 30,624.01	
FENCING AND GATES						
	4' High Chain Link Fencing-Black Vinyl Coated-Racetrack	1,511	LF	\$ 20.00	\$ 30,220.00	
	4' High Chain Link Double 6' Wide Gate-Black Vinyl Coated-Racetrack	6	EA	\$ 1,000.00	\$ 6,000.00	
	4' High Chain Link Fencing-Black Vinyl Coated-Bicycle Learning Course	507	LF	\$ 20.00	\$ 10,140.00	
	4' High Chain Link Double 6' Wide Gate-Black Vinyl Coated-Bicycle Learning Course	2	EA	\$ 1,000.00	\$ 2,000.00	
	6' High Security Fencing-Black Wire-Park Limit Line	2,166	LF	\$ 62.00	\$ 134,292.00	
	6' High Security Fencing-Black Wire-6' Gate-Park Limit Line	6	EA	\$ 3,600.00	\$ 21,600.00	
					\$ 204,252.00	
SITE FURNISHINGS						
	Aluminum Bleachers	4	EA	\$ 21,342.57	\$ 85,370.28	CDP
	Registration-Admin-Facility-Romtec or Equal Per Plans-Electrical-Internet-Sewer-Water Line	1	EA	\$ 325,500.00	\$ 325,500.00	CDP
	Picnic Tables	6	EA	\$ 2,418.00	\$ 14,508.00	CDP
	Trash Recepticals	6	EA	\$ 1,395.00	\$ 8,370.00	CDP
	Bike Racks	8	EA	\$ 1,023.00	\$ 8,184.00	CDP
	Flag Poles	2	EA	\$ 2,325.00	\$ 4,650.00	CDP
					\$ 446,582.28	
SHADE STRUCTURES						
	Shade Structures-Bleachers	1	LS	\$ 137,591.40	\$ 137,591.40	CDP
	Shade Structures-Bicycle Playspace	1	LS	\$ 137,591.40	\$ 137,591.40	CDP
	Shade Structures-Awards-Gathering Space	1	LS	\$ 137,591.40	\$ 137,591.40	CDP
	Shade Structures-Start Hill Gate Operator-Staging	1	LS	\$ 137,591.40	\$ 137,591.40	CDP
					\$ 550,365.60	

SYNTHETIC TURF

	Synthetic turf-Amphitheatre	7,500	SQ	\$ 3.35	\$ 25,125.00	
	Synthetic turf-Track fence inward	50,000	SQ	\$ 3.35	\$ 167,500.00	
					\$ 192,625.00	

CAST-IN-PLACE CONCRETE

	Concrete Perimeter Walkway	16,000	SF	\$ 13.87	\$ 221,920.00	
	Concrete Staging Area	15,000	SF	\$ 13.87	\$ 208,050.00	
	Concrete Entry Plaza	18,000	SF	\$ 13.87	\$ 249,660.00	
	Concrete Bicycle Learning Space	8,500	SF	\$ 13.87	\$ 117,895.00	
	Concrete Seatwalls-Gathering Space	570	LF	\$ 13.87	\$ 7,905.90	
	Concrete Ramps-Gathering Space	3,200	SF	\$ 13.87	\$ 44,384.00	
	Concrete Stairset-Gathering Space	98	SF	\$ 13.87	\$ 1,359.26	
	Racetrack Start Hill-6" Reinforced Concrete	5,400	SF	\$ 13.87	\$ 74,898.00	
	Concrete-Racetrack	29,500	SF	\$ 13.87	\$ 409,165.00	
	Concrete-Pump Track	8,600	SF	\$ 13.87	\$ 119,282.00	
	Concrete-Jumpline	2,900	SF	\$ 13.87	\$ 40,223.00	
	Concrete bollards	1	LS	\$ 18,500.00	\$ 18,500.00	
					\$ 1,513,242.16	

METAL FABRICATION

	Guard Rails with Pickets- 3M Hill	340	LF	\$ 80.00	\$ 27,200.00	
	Guard Rails with Pickets- Entry Ramp	285	LF	\$ 80.00	\$ 22,800.00	
	Barrier Boards-Racetrack Start Hill	90	LF	\$ 80.00	\$ 7,200.00	
	Handrails-Stair Sets	30	LF	\$ 80.00	\$ 2,400.00	
	Guardrails-Gathering Space Ramps	205	LF	\$ 80.00	\$ 16,400.00	
					\$ 76,000.00	

SIGNAGE

	Track Rules and Regulation Signage	4	EA	\$ 2,325.00	\$ 9,300.00	CDP
	Bicycle Play Custom Graphic Panels	6	EA	\$ 7,905.00	\$ 47,430.00	CDP
					\$ 56,730.00	

EQUIPMENT

	Prostart-8 person Drum Gate-Electric	1	EA	\$ 41,850.00	\$ 41,850.00	CDP
	MY Laps timing device System	1	EA	\$ 13,950.00	\$ 13,950.00	CDP
	Audio System	1	EA	\$ 23,250.00	\$ 23,250.00	CDP
					\$ 79,050.00	

ELECTRICAL

	Quadplex Power Outlets-Outdoor with Cover-120V	6	EA	\$ 1,600.00	\$ 9,600.00	
	240V Power Outlet with cover	1	EA	\$ 2,800.00	\$ 2,800.00	
	3-Phase Start gate	1	EA	\$ 6,500.00	\$ 6,500.00	
	Site electrical -Conduit-Trenching-Backfill	1	LS	\$ 19,500.00	\$ 19,500.00	
	2" Conduit Sleeve-Racetrack Gate lights-sleeving	150	LF	\$ 25.00	\$ 3,750.00	
					\$ 42,150.00	

BID TAB SUB-TOTAL	\$ 5,033,549.05
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*CONTINGENCY 7% (Based off Bid Tab Sub-Total)	\$ 352,348.43
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PROJECT MANAGEMENT + MARKUP TOTAL	\$ 503,354.91
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TOTAL PROJECT COST-GMP	\$ 5,889,252.39
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***CDP: City Direct Purchase material option.** City has the option to purchase these material list items direct should there be an evaluated cost savings to the project. Lead times will need to be assessed as to not impact the construction schedule.

***Value of the City Direct Purchase items: approximately =\$115,884.12**

***Any unused contingency at project completion shall be returned to owner and deducted through a change order.**

EXHIBIT C - DEFINITIONS

1. “Agreement” means this Agreement between Owner and CMAR, including any Exhibits attached hereto, and any amendments or revisions to this Agreement or any of the Exhibits.
2. “Authorized Representative” means the person designated by the Owner and CMAR, respectively, to act on its behalf, pursuant to the terms of this Agreement. The Authorized Representative for the Owner is referred to herein in this Agreement as the City’s Project Coordinator.
3. “Bi-Weekly” means once per every two weeks.
4. “Change Order” means a written order to the CMAR signed by the Owner, issued after execution of the Agreement, authorizing a change in the work or an adjustment in the GMP or the Contract Time. The GMP and the Contract Time may be changed only by a Change Order or Contract Amendment. A Change Order signed by the CMAR indicates its agreement therewith, including the adjustment in the GMP or the Contract Time.
5. “Completion (Final)” means acceptance of the **PROJECT** by the Owner as evidenced by its signature upon a final payment Certification form and approval thereof by the City Manager or his designee. The final payment Certification shall be signed only after the Owner has assured itself by tests, inspections, or otherwise that all the provisions of the Agreement have been carried out as required.
6. “Completion (Substantial)” means an acceptance of the work by the Owner when construction is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the work or designated portion thereof for the use for which it is intended. A certificate of occupancy or compliance, when applicable, issued by the Building Official is required concurrent with or prior to issuance of the Certificate of Substantial Completion.
7. “Contract Time” means the period contained in Exhibit A – Project Schedule.
8. “Effective Date of the Agreement” means the date upon which the Agreement is signed and delivered by the latter of the two parties.
9. “Exhibits” means those agreements, forms of agreements, instruments, and other documents attached hereto and designated as exhibits to this Agreement or incorporated by reference into this Agreement.
10. “Field Change Order” is a written change order accepted by the CMAR and approved by the Project Coordinator for minor changes in the work, not involving the adjustments in the GMP or an extension of Contract Time, and not inconsistent with the overall intent of the Contract Documents.
11. “Field Directive Change” is a written directive to the CMAR, issued on or after the Effective Date of the Agreement ordering an addition, deletion, or revision in the work, or responding to differing or unforeseen physical conditions under which the work is to be performed or to emergencies. A Field Directive Change may not change the GMP or the Contract Time, but is evidence that the parties expect that the change directed or

documented by a Field Directive Change will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the GMP or the Contract Time.

12. “Force Majeure” means those conditions constituting excuse from performance as described in and subject to the conditions described herein.
13. “Guaranteed Maximum Price (GMP)” was established by the CMAR guaranteeing the maximum price to the Owner for the cost of the **PROJECT**.
14. “LD Beginning Date” means six (6) months after the Agreement start date.
15. “Owner” means the City of Port St. Lucie, Florida, a municipal corporation, and any successor in interest thereto.
16. “Permitting Authority” means the City of Port St. Lucie and any other applicable governmental authority acting in its governmental and regulatory capacity, which is required to issue or grant any permit, certificate, or other approval which is required as a condition precedent to the commencement of any construction of the **PROJECT**, or any part thereof, including the Building Permit.
17. “**PROJECT**” means the construction and equipping of the **PROJECT** established in this Agreement and related or appurtenant facilities thereto, in accordance with the Project Plans and Specifications.
18. “Project Plans and Specifications” means the construction drawings and final specifications prepared in the previous design for **PROJECT**, which was performed by CMAR under City Contract 20230085, supplements, amendments or additions thereto approved by the Owner and CMAR, which shall also include any construction drawings and final specifications required for the repair or construction of the **PROJECT**.
19. “Project Schedule” means the estimated and approximate schedule and sequence of events for the commencement, progression, and completion of the **PROJECT**, as contained in Exhibit A, and as such schedule may be amended as provided for in the Agreement.
20. “Project Site” means the designated area where the **PROJECT** is scheduled to occur.
21. “Punch List Completion Date” means the date upon which all previously incomplete or unsatisfactory items, as identified by CMAR and/or Owner are completed in a competent and workmanlike manner, consistent with standards for renovation of this type and with good building practices in the State of Florida.
22. “Subcontractor” means any person or organization as defined in Paragraph 6.01 hereof.

EXHIBIT D – SINGLE SOURCE JUSTIFICATION DOCUMENTS



SOLE SOURCE JUSTIFICATION

INTENT

In order to better collaborate with Procurement Services efforts within various models of funding between Parks/Recreation departments, Municipalities, Foundations and State/Federal Grants, the following documentation is intended to communicate the scope of sole source processes and components involved in the design and operations of a USA BMX sanctioned facility.

UNIQUE CORPORATE METRICS and STRUCTURE

- . USA BMX is the Sanctioning Body of the sport of BMX in the United States.
- . USA BMX has been providing sanctioned BMX events for over 45 years.
- . USA BMX is the largest youth cycling program in the world with over 14,000 sanctioned events, 320 sanctioned tracks, and generating more than 550,000 participants annually.
- . USA BMX runs the USA National Championships for both BMX Racing and BMX Freestyle- identifying the US National Team for Olympic qualifying points at World Cups.
- . BMX Racing and BMX Freestyle are Olympic Sports.
- . The USA BMX FOUNDATION has impacted over 225,000 students and at-risk youth nationwide through both STE(A)M education in schools and the RISE mentorship initiative in underserved communities.
- . USA BMX, USA BMX Freestyle, the USA BMX Foundation, and ABA ETHOS are all sub-entities of ABA- *AMERICAN BICYCLE ASSOCIATION*- a private for-profit business.

PROPRIETARY CRITERIA

1) SANCTIONING

Only USA BMX sanctioned facilities receive the following programming & activation:

- . Guaranteed events for economic development through sports tourism
- . Insurance for scheduled events and practice
- . Programming from the USA BMX Foundation
- . 5-year licensing package (*worth \$2 million dollars*) for event operations, training, programming, marketing, and copyrighted software

2) FACILITY/BIKE COURSE - DESIGN, ENGINEERING & DIRT SHAPING

With over 45 years of experience designing and building BMX tracks across the country, the need for quality control and quality assurance in all design/dirt shaping efforts is paramount for not only the rider's safety and high-level performance, but also for maintenance and operational standards.

USA BMX is committed to implementing innovative solutions to elevate the facilities within our industry. ABA ETHOS (*the internal Architectural and dirt shaping team of the American Bicycle Association*) culminates the intellectual property of our entire team to standardize our design requirements/tolerances to meet our operating procedures and protocols (*listed separately under ITEM 3*).

ABA ETHOS is the sole entity that transcends our designs with the recommendations from the elite athletes and their coaches from across the world, the experience of our 320 track operators, and the customer feedback of over 50,000 members to develop our blueprint for success.

3) OPERATIONAL PROCEDURES & PROTOCOLS

The following list offers examples of protected standards and parameters developed by our internal team of event directors, athletes, coaches, builders, and design professionals:

- | | |
|----------------------------------|---|
| . Vehicular sizing & circulation | . Pedestrian and cyclist circulation |
| . Registration staging | . Visitor Access |
| . Race staging | . Equipment specifications |
| . Amateur & Pro lines | . Volunteer operations |
| . Medical team access | . Moto inquiries |
| . Awards staging | . Super saver collections |
| . IT- for operations | . Durability ratings for building materials |
| . Structural clearances | . USA BMX Foundation Programming |
| . Lighting levels | . Dirt jump design and shaping |
| . Administrative offices | . Community engagement center and suites |
| . ETC | |

EXCLUSIVITY

The following represents the Professional Design Teams authorized and approved by USA BMX to provide copyrighted design and construction documents for the development of new facilities sanctioning Racing, Freestyle and Pump events:

ABA ETHOS

TEAM LEAD

- 1) Site Design for parking logistics and event operational circulation.
- 2) Architectural & Interior Design of all above-ground improvements related to BMX operations. Options include- Arena roof, Gym, locker rooms, registration offices, suites, USA BMX Foundation- classrooms and program spaces, mechanics stations, pro-shop, and associated community outreach spaces, if applicable.
- 3) Equipment selection of the following- Starting gates, 3, 5, & 8 meter hill engineering and structure, start and finish line trussing, bleachers, fans, lighting systems, etc- meeting US and International Cycling Federation Standards.
- 4) Design guidelines for overhead lighting.
- 5) Timing system installation and programming, if applicable.

ASD (ACTION SPORTS DESIGN)

DESIGN SPECIALIST- BMX RACING, FREESTYLE, PUMP, FLOW COURSES

- 1) Design documents for all competitive and recreational courses
- 2) Associated drainage and site grading
- 3) Landscape architecture

WALLACE ENGINEERING

STRUCTURAL ENGINEER

- 1) Specializing in long-span metal building systems, strategy options and operational design tolerances

ABA ETHOS

DIRT SHAPING

- 1) Shaping for all dirt jumps, berms, ramps and straights associated with the custom course design and layout.

COLLABORATION OPPORTUNITIES

ABA ETHOS will work with all other required external professional design and construction teams as necessary. These scopes of services can be publicly bid or secured through the RFQ/RFP process as dictated by the local authority having jurisdiction, if necessary.

For Example:

- . Geotechnical Engineering
- . Surveying
- . Environmental studies
- . Civil Engineering
- . Preconstruction services
- . GC, CM-At Risk or CM-Agency
- . MEP Engineering
- . Testing Agencies
- . Utilities & Infrastructure
- . LEED

REASONABLENESS OF PRICING AND COST CONTROL

ABA ETHOS will work with the selected General Contractor or Construction Manager during all phases of design to assist in proactive cost estimating and value engineering. ABA ETHOS will provide examples of costs/budgets in previous projects for guidance.

ABA ETHOS currently has three active projects in:

- . Durango, CO
- . Gretna, LA
- . Tulsa, OK

DISTRIBUTORS

USA BMX does not have other entities acting on its behalf as distributors of facility design or event programming.



SOLE SOURCE JUSTIFICATION ADAPTIVE ALL-WHEEL PARK ADDENDUM

May 9, 2025

INTENT

Updated Sole Source Requirements for USA BMX Sanctioned Facilities featuring Adaptive All-Wheel Parks.

UPDATES

1. Course Shaping and Specialty Amenities

Shaping of all material types for all rideable areas, jumps, berms, ramps, straights, learning, patios and skills areas associated with the custom course design and layout.

2. General Recommendations

ABA Ethos shall work with approved specialty consultants, suppliers and construction teams (pre-qualified by ABA-Ethos) to perform services aligned with the unique features provided within action sports facilities. ABA Ethos considers pre-authorized specialty teams to be a part of the Sole Source qualifications in order to provide the highest level of quality for the project. All Professional Design Teams authorized in the primary Sole Source Justification document are also considered to be pre-qualified specialty consultants, suppliers and construction teams.

Circumstances that would justify a Sole Source Master Agreement for an entire site with multiple scopes:

- Integrated Specialty Construction Across Full Site Boundaries
- Requirements for Unique Construction Methodology and Staging
- One-Source Oversight to unify the Standard of Care
- Specialty Finish Throughout Walkways and Transition Zones
- Economy of Scale for Concrete and Materials
- Accelerated Project Delivery
- Work Force Consistency
- Reduction of Learning Curve and Increased Efficiency
- Ability to Value Engineer in real Time and Make Field-Directed Changes Efficiently
- Reduced Risk of Change Orders
- Greatest Value for Stakeholders
- Control Over Installation Means & Methods
- Preservation of Long-Term Infrastructure Integrity