

**AGREEMENT
BETWEEN THE CITY OF COOPER CITY
AND
PLAYCORE WISCONSIN d/b/a GAMETIME**

THIS AGREEMENT is entered into on September 13, 2022 between the City of Cooper City, a municipal corporation with principal offices located at 9090 SW 50th Place, Cooper City, Florida 33328 ("City") and Playcore Wisconsin, Inc. d/b/a GameTime, a corporation authorized to do business in the State of Florida, with principal office located at 150 Playcore Drive SE, Fort Payne, AL 35967 ("Contractor"). The parties hereby agree to the following terms and conditions.

1. In return for valuable consideration, Contractor shall comply with the terms and conditions of the US Communities Contract #2017001134 between the City of Charlotte, NC and Playcore Wisconsin, Inc. d/b/a GameTime ("Purchasing Contract") attached hereto as Exhibit A and the Contractor's proposal submitted to the City (the "Proposal") attached hereto as Exhibit B. All terms and conditions of the contract documents set forth in Exhibit A and Exhibit B are incorporated herein as if set forth in full, except as modified by this Agreement. In the event of a conflict between this Agreement, Exhibit A and Exhibit B, this Agreement shall prevail, followed by Exhibit B.
2. Upon execution of this Agreement, all references made to the City of Charlotte, as the lead agency in the Purchasing Contract, shall be interpreted as pertaining to the City of Cooper City, and all terms and conditions of Exhibit A shall be deemed as having been implemented for use within the City of Cooper City. It is understood that wherever the words "agency name" or "agency board name" appear, they shall be read as "City of Cooper City" and "City of Cooper City Commissioners".
3. Term. The term of this Agreement shall be concurrent with the term set forth in Exhibit A.
4. Contract Sum and Payments:
The price for the Product is as set forth in Exhibit A. All payments shall be governed by the Local Government Prompt Payment Act, F.S., Part VII, Chapter 218.
5. **Insurance:** In addition to the insurance requirements stated in the Purchasing Agreement, Contractor shall obtain at Contractor's expense all necessary insurance in such form and amount as specified in the original bid document or as required by the City's Risk Manager before beginning work under this Agreement including, but not limited to, Workers' Compensation, Commercial General Liability, and all other insurance as required by the City. Contractor shall maintain such insurance in full force and effect during the life of this Agreement. Contractor shall provide to the City's Risk and Safety Manager certificates of all insurances required under this section prior to beginning any work under this Agreement. The Contractor will ensure that all subcontractors comply with the above guidelines and will retain all necessary insurance in force throughout the term of this agreement. The following minimal insurance coverage shall be provided:

- a. Worker's Compensation Insurance: The Contractor shall procure and maintain for the life of this Agreement, Workers' Compensation Insurance covering all employees with limits meeting all applicable state and federal laws. This coverage shall include Employer's Liability with limits meeting all applicable state and federal laws. This coverage must extend to any sub-Contractor that does not have their own Workers' Compensation and Employer's Liability Insurance. The policy must contain a waiver of subrogation in favor of the City of Cooper City, executed by the insurance company. Sixty-(60) days notice of cancellation is required and must be provided to the City of Cooper City via Certified Mail.
- b. Comprehensive General Liability: The Contractor shall procure and maintain, for the life of this Agreement, Comprehensive General Liability Insurance. This coverage shall be on an "Occurrence" basis. Coverage shall include Premises and Operations; Independent Contractors' Products and Completed Operations and Contractual Liability. This policy shall provide coverage for death, personal injury or property damage that could arise directly or indirectly from the performance of this Agreement.
- c. Business Automobile Liability: The Contractor shall procure and maintain, for the life of the Agreement, Business Automobile Liability Insurance.
- d. The Minimum Limits of Coverage shall be \$1,000,000 per occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability.
- e. The City must be named as an additional insured for General Liability coverage unless Owners and Contractors' Protective Coverage is also provided, or required. Sixty (60) days written notice must be provided to the City via Certified Mail in the event of cancellation.
- f. The minimum limits of coverage shall be \$1,000,000 per Occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This coverage shall be an "Any Auto" type policy. The City must be listed as an Additional Insured under the Policy. Sixty (60) days written notice must be provided to the City via Certified Mail in the event of cancellation.
- g. In the event that sub-contractors used by the Contractor do not have insurance, or do not meet the insurance limits, Contractor shall indemnify and hold harmless the City for any claim in excess of the sub-Contractors' insurance coverage, arising out of negligent acts, errors or omissions of the sub-contractors.
- h. Contractor shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the City.

- i. Contractor shall indemnify and hold the City harmless for any damages resulting from failure of the Contractor to take out and maintain such insurance. Contractor's Liability Insurance policies shall be endorsed to add the City as an additional insured. Contractor shall be responsible for payment of all deductibles and self-insurance retentions on Contractor's Liability Insurance policies.
6. Indemnification:
 - a. The Contractor shall indemnify and hold harmless the City, its elected and appointed officials, employees, and agents from any and all claims, suits, actions, damages, liability, and expenses (including attorneys' fees) in connection with loss of life, bodily or personal injury, or property damage, including loss of use thereof, directly or indirectly caused by, resulting from, arising out of or occurring in connection with the operations of the Contractor or its officers, employees, agents, subcontractors, or independent Contractors, excepting only such loss of life, bodily or personal injury, or property damage solely attributable to the gross negligence or willful misconduct of the City or its elected or appointed officials and employees. The above provisions shall survive the termination of this Agreement and shall pertain to any occurrence during the term of this Agreement, even though the claim may be made after the termination hereof.
 - b. Upon completion of all services, obligations and duties provided for in this Agreement, or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive indefinitely.
 - c. The Contractor shall pay all claims, losses, liens, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, reasonable attorney's fees (including appellate attorney's fees) and costs.
 - d. The City and Contractor recognize that various provisions of this Agreement, including but not limited to this Section, provide for indemnification by the Contractor and requires a specific consideration be given there for. The Parties therefore agree that the sum of Ten Dollars and 00/100 (\$10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by Contractor. Furthermore, the City and Contractor understand and agree that the covenants and representations relating to this indemnification provision shall serve the term of this Agreement and continue in full force and effect as to the City's and the Contractor's responsibility to indemnify.
 - e. City reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of Contractor under the indemnification agreement.

- f. Nothing contained herein is intended nor shall it be construed to waive City's rights and immunities under the common law or Florida Statute 768.28 as amended from time to time.
7. Assignment and Subcontracting:

Contractor shall not transfer or assign the performance required by this Agreement without the prior consent of the City. This Agreement, or any portion thereof, shall not be subcontracted without the prior written consent of the city.
8. Termination:
 - a. Termination for Convenience: This Agreement may be terminated by the City for convenience, upon seven (7) days of written notice by the City to the Contractor for such termination in which event the Contractor shall be paid its compensation for services performed to termination date, including services reasonably related to termination. In the event that the Contractor abandons this Agreement or causes it to be terminated, Contractor shall indemnify the city against loss pertaining to this termination.
 - b. Default by Contractor: In addition to all other remedies available to the City, this Agreement shall be subject to cancellation by the City for cause, should the Contractor neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) days after receipt by Contractor of written notice of such neglect or failure.
9. Public Records

A. Public Records: CONTRACTOR shall comply with The Florida Public Records Act as follows:

 1. Keep and maintain public records in the CONTRACTOR's possession or control in connection with the CONTRACTOR's performance under this Agreement that ordinarily and necessarily would be required by the City in order to perform the service.
 2. Upon request by City's records custodian, provide City with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
 3. 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 this Agreement.
 4. Upon completion of this Agreement or in the event of termination of this Agreement by either party, any and all public records relating to this Agreement

in the possession of CONTRACTOR shall be delivered by CONTRACTOR to City, at no cost to City, within seven days. All records stored electronically by CONTRACTOR shall be delivered to CITY in a format that is compatible with City's information technology systems. Once the public records have been delivered to City upon completion or termination of this Agreement, CONTRACTOR shall destroy any and all duplicate public records that are exempt or confidential and exempt from public record disclosure requirements.

5. CONTRACTOR'S failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the City.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-434-4300, PRR@COOPERCITYFL.ORG OR BY MAIL: CITY OF COOPER CITY – CITY CLERK'S OFFICE, 9090 SW 50TH PLACE, COOPER CITY, FL 33328.

10. Agreement Subject to Funding

This agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the City of Cooper City in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

14. Governing law and venue:

This Agreement shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this agreement is fixed in Broward County, Florida.

15. Signatory Authority:

The Contractor shall provide the City with copies of requisite documentation evidencing that the signatory for Contractor has the authority to enter into this Agreement.

16. Severability; Waiver of Provisions

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

17. No Construction Against Drafting Party:

Each party to this Agreement expressly recognizes that this Agreement results from the negotiation process in which each party was represented by counsel and contributed to the drafting of this Agreement. Given this fact, no legal or other presumptions against the party drafting this Agreement concerning its construction, interpretation or otherwise accrue to the benefit of any party to the Agreement, and each party expressly waives the right to assert such a presumption in any proceedings or disputes connected with, arising out of, or involving this Agreement.

18. Notice:

Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person; sent by U.S. Certified Mail, U.S. Express Mail, air or ground courier services or by messenger service, addressed to the party for whom it is intended at the following addresses.

CITY

Joseph Napoli, City Manager
City of Cooper City
9090 SW 50th Place
Cooper City, Florida 33328
jnapoli@coopercityfl.org

With a copy to City Attorney at the following address:

Jacob G. Horowitz, Esq.
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Blvd., Suite 200
Fort Lauderdale, FL 33308
jhorowitz@gorencherof.com

CONTRACTOR

Donald R. King
PlayCore Wisconsin, Inc. d/b/a GameTime
150 Playcore Drive SE
Fort Payne, AL 35967
dking@playcore.com

19. Scrutinized Companies:

- a. CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the CONTRACTOR or its subcontractors are found to have submitted a false certification; or if the CONTRACTOR, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

- b. If this Agreement is for more than one million dollars, the CONTRACTOR certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the CONTRACTOR, its affiliates, or its subcontractors are found to have submitted a false certification; or if the CONTRACTOR, its affiliates, or its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.
- c. The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.
- d. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

20. E-Verify. CONTRACTOR certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

20.1 Definitions for this Section:

- 20.1.1 "Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration. "Contractor" includes, but is not limited to, CONTRACTOR or consultant.
- 20.1.2 "Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.
- 20.1.3 "E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

20.2 Registration Requirement; Termination:

Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

20.2.1 All persons employed by a Contractor to perform employment duties within Florida during the term of the contract;

20.2.2 All persons (including subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City of Cooper City. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Cooper City; and

20.2.3 The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

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IN WITNESS OF THE FOREGOING, the parties have hereunto set their hands and seals on the dates written below.

ATTEST:

BY: Tedra Allen
Tedra Allen, City Clerk

CITY OF COOPER CITY, a Florida
municipal corporation

BY:

Greg Ross
MAYOR, GREG ROSS

APPROVED AS TO LEGAL FORM:

BY: Jacob G. Horowitz, Esq.
City Attorney

WITNESSED BY:

Gina Wilson
Gina Wilson
Print name

Jennifer Cassidy
Jennifer Cassidy
Print name

PLAYCORE WISCONSON, INC. D/B/A
GAMETIME

BY:

Rob Dominica
Name: Rob Dominica
Title: President/drp

STATE OF Florida)
COUNTY OF Seminole)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Rob Dominica, as registered agent of Playcore Wisconsin, Inc. d/b/a GameTime, and acknowledged that he has executed the foregoing instrument for the use and purposes mentioned in it and that the instrument is the act and deed of Rob Dominica, as registered agent of Playcore Wisconsin, Inc. d/b/a GameTime, and who is personally known to me or has produced _____ as identification.

IN WITNESS WHEREOF, I have set my hand and seal in the State and County aforesaid
this 26 day of August, 2022


NOTARY PUBLIC
Courtney Crawford

Print or Type Name

My Commission Expires: 07/26/2025



COURTNEY L. CRAWFORD
Commission # HH 158051
Expires July 26, 2025
Bonded Thru Budget Notary Services