

**CONSTRUCTION AGREEMENT
JOSHUA CITY PARK**

THIS CONSTRUCTION AGREEMENT (“Construction Agreement”) is made by Gametime c/o Cunningham Recreation, P.O. Box 2408981, Charlotte, NC 28224, a North Carolina corporation (the “Contractor”) and the City of Joshua, Texas, a Texas home rule municipal corporation (“City”). In consideration of the promises specified in this Construction Agreement, City and Contractor agree as follows:

I. The Work

Contractor shall provide all labor, supervision, materials, and equipment necessary to perform all work required by the Quote and Grant Rules and Limitations dated October 9, 2024, for the Joshua City Park, as referenced in attached Exhibit A, the terms of which are incorporated by reference.

II. Contract Documents

The Contract Documents shall consist of the Quote and Grant Rules and Limitations dated October 9, 2024, as referenced above, and the following documents: (1) this Construction Agreement; (2) any properly authorized change orders; and (3) the Construction Drawings and Details, attached hereto as Exhibit B and incorporated by reference. These Contract Documents are incorporated by reference into this Construction Agreement as if set out here in their entirety. This includes any professional blueprints, drawings, quotes, attachments, or any other documents or renderings signed by either party, including items signed by both parties attached in the Exhibits.

The Contract Documents are intended to be complementary; what is called for by one document shall be as binding as if called for by all Contract Documents. It is specifically provided, however, that in the event of any inconsistency in the Contract Documents, the inconsistency shall be resolved by giving precedence to the Contract Documents in the order in which they are listed above.

III. Total of Payments Due Contractor

For performance of the work in accordance with the Contract Documents, City shall pay Contractor in current funds an amount not to exceed **SIX HUNDRED THIRTEEN THOUSAND, SIX HUNDRED FIFTY-SIX DOLLARS AND 0/100 CENTS (\$613,656.00)**.

IV. Dates to Start and Complete Work

Contractor shall begin work the earlier of either of the following: (1) no later than thirty (30) days after Contractor receives written notice to proceed from City, or (2) the date on which Contractor’s employees are on site to commence construction. For purposes of this Construction Agreement, “written notice” includes any written documentation from City to Contractor, and

includes an email. All work required under the Contract Documents shall be completed within forty-five (45) calendar days after the date construction activity begins.

V. CONTRACTOR'S INDEMNITY TO CITY AND OTHERS

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE JOSHUA CITY COUNCIL, ITS OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, OR RESULT FROM THE PERFORMANCE OF THE WORK OR WHICH ARE CAUSED BY THE INTENTIONAL ACTS OR NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS OR EMPLOYEES OF EITHER CONTRACTOR OR ITS SUBCONTRACTORS, AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH CONTRACTOR IS LEGALLY RESPONSIBLE (THE "INDEMNIFIED ITEMS").

BY WAY OF EXAMPLE, THE INDEMNIFIED ITEMS MAY INCLUDE PERSONAL INJURY AND DEATH CLAIMS AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF PROPERTY. INDEMNIFIED ITEMS SHALL INCLUDE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.

VI. Proof of Insurance Coverage

Contractor shall provide proof that it and its subcontractors are maintaining in effect appropriate general liability insurance by submitting to City appropriate insurance policy endorsements and/or other evidence of coverage.

VII. Equal Payments

City shall provide Contractor a payment of fifty percent (50%) of the total contract price (a payment of \$306,828.00) upon City's approval and execution of this Construction Agreement. The remaining fifty percent (50%) payment of \$306,838.00 shall be paid to Contractor once all materials for the project contemplated by this Construction Agreement have arrived or otherwise been delivered to the project site or other mutually agreed upon site in the City.

The fact that City makes a progress payment shall not be deemed to be an admission by City concerning the quantity, quality or sufficiency of Contractor's work. Progress payments shall not be deemed to be acceptance of the work nor shall a progress payment release Contractor from any of its responsibilities under the Contract Documents.

VIII. Liquidated Damages

Damages may be assessed in the amount of \$500.00 per day for build days that exceed forty-five (45) days from the start date, as defined herein. City shall take into consideration weather event delays or other reasonable delays mutually agreed upon by City and Contractor.

IX. Acceptance of the Work

When the work is completed, Contractor shall request that City perform a final inspection. City shall inspect the work. If City determines that the work has been completed in accordance with the Contract Documents, it shall issue a written notice of acceptance of the work. If City determines that the work has not been completed in accordance with the Contract Documents, then it shall provide Contractor with a verbal or written list of items to be completed before another final inspection shall be scheduled.

The work shall not be deemed to be accepted based on “substantial completion” of the work, use or occupancy of the work, or for any reason other than City’s written notice of acceptance.

In its discretion, City may issue a notice of acceptance covering only a portion of the work. In this event, the notice shall state specifically what portion of the work is accepted.

X. Final Payment/Change Orders

After all work required under the Contract Documents has been completed, inspected, and accepted, City shall calculate the final payment amount promptly after necessary measurements and computations are made. The final payment amount shall be calculated to include the estimate of the value of work properly completed since the date of the most recent previous progress payment; correct prior progress payments; and include other amounts previously withheld that are to be returned to Contractor, if any.

Final payment to Contractor shall not be due until Contractor provides full or partial releases of liens, or other evidence satisfactory to City to show that all sums due for labor, services, and materials furnished for or used in connection with the work have been paid or shall be paid with the final payment. To ensure this result, Contractor consents to the issuance of the final payment in the form of joint checks made payable to Contractor and others. City may, but is not obligated, to issue final payment using joint checks.

Final payment to Contractor shall not be due until Contractor has supplied to City copies of all documents that City determines are reasonably necessary to ensure both that the final payment amount is properly calculated and that City has satisfied its obligation to administer the Construction Agreement in accordance with applicable law.

Any change orders necessitated by the construction of the project shall be submitted to City for review and if approved, shall be paid to Contractor upon completion of the project and acceptance by City.

XI. Contractor's Warranty

For a two-year period after the date specified in a written notice of acceptance of work, Contractor shall provide and pay for all labor and materials that City determines are necessary to correct all defects in the work arising because of defective materials or workmanship supplied or provided by Contractor or any subcontractor.

Forty-five (45) to sixty (60) days before the end of the two-year warranty period, City may make a warranty inspection of the work. City shall notify Contractor of the date and time of this inspection so that a Contractor representative may be present. After the warranty inspection, and before the end of the two-year warranty period, City shall mail to Contractor a written notice that specifies the defects in the work that are to be corrected, if any.

Contractor shall begin the remedial work within ten (10) calendar days after receiving the written notice from City. If Contractor does not begin the remedial work timely or prosecute it diligently, then City may pay for necessary labor and materials to effect repairs and these expenses shall be paid by Contractor.

If City determines that a hazard exists because of defective materials and workmanship, then City may take steps to alleviate the hazard, including making repairs. These steps may be taken without prior notice to Contractor. Expenses incurred by City to alleviate the hazard shall be paid by Contractor.

Any work performed by or for Contractor to fulfill its warranty obligations shall be performed in accordance with the Contract Documents. Work performed during the two-year warranty period shall itself be subject to a two-year warranty. This warranty shall be the same as described in this section.

City may make as many warranty inspections as it deems appropriate.

XII. Compliance with Laws

Contractor shall be responsible for ensuring that it and any subcontractors performing any portion of the work required under the Contract Documents comply with all applicable federal, state, county, and municipal laws, regulations, and rules that relate in any way to the performance and completion of the work. This provision applies whether or not a legal requirement is described or referred to in the Contract Documents.

XIII. Other Provisions

The Contract Documents shall be construed and interpreted by applying Texas law. Venue for any litigation concerning the Contract Documents shall be proper in Johnson County, Texas.

The Contract Documents are binding upon City and Contractor and shall inure to their benefit and as well as that of their respective successors and assigns.

In the event of any controversy or claim arising out of or relating to this Construction Agreement, or the breach of this Construction Agreement, the parties hereto agree to submit such controversy or claim to nonbinding mediation.

EXECUTED ON THIS THE ___ DAY OF OCTOBER, 2024.

CONTRACTOR:

CUNNINGHAM RECREATION,
A North Carolina Corporation

Name: _____

Title: _____

CITY OF JOSHUA, TEXAS
A Texas Home Rule Municipality

Name: _____

Title: _____