

PROJECT COOPERATION AGREEMENT

THIS PROJECT COORDINATION AGREEMENT (the "Agreement") is made and entered into effective as of this 16th day of June, 2021, by and between **O.B. MITCHELL MOORE PARK, LLC**, a Florida nonprofit limited liability company (hereinafter referred to as "OBMM"), with its principal office located at 14360 SW 77 Court, Miami, Florida, and the sole member of which is The Orange Bowl Committee, Inc., a Florida nonprofit corporation, and the **CITY OF POMPANO BEACH**, a municipal corporation of the State of Florida (hereinafter referred to as "City"), with offices at 100 W. Atlantic Blvd, Pompano Beach, Florida 33060.

RECITALS:

A. The City is the fee simple owner of certain real property located at 901 NW 10th St, Pompano Beach, Florida 33060, known as Mitchell Moore Park, a municipal public park of the City (the "Property") on which the OBMM has agreed to make a financial charitable contribution and to construct, renovate or upgrade certain mutually agreeable facilities, including enhancements to the existing scoreboard, an additional new mid-field bleacher and press box system, field naming recognition, refurbishment of two (2) existing building structures, including, but not limited to, power cleaning and new paint, replacement of shade awnings on the City's five (5) existing bleacher units, refurbishment of the existing walking trail, and an eight (8) year field maintenance program as described in Section 4 hereof (unless a longer period of time is mutually agreed upon) in order of priority generally as set forth in more detail in this Agreement and on Exhibit A-1 or as may be otherwise mutually agreed upon in writing by OBMM and the City (all of the foregoing improvements are collectively the "Project"), which Project will further the improvements currently being undertaken by the City as outlined on Exhibit A-2 hereto, including, without limitation, OBMM naming recognition signage as described below (the "City's Improvements").

B. Pursuant to Resolution No. _____, a copy of which is attached hereto and made a part hereof as Exhibit B (the "Resolution"), the City has made the following determinations:

(i) For the reasons stated in the Resolution, it is in the City's best interest to waive any competitive bidding for the Project;

(ii) It is in the City's best interest to have OBMM contract directly with, and direct and manage, all design and other professional services and construction work for the Project, as long as OBMM complies with all applicable governmental requirements, including the Consultants' Competitive Negotiation Act, Section 287.055 of the Florida Statutes;

(iii) The City has followed its established procedures for the naming of public facilities, and its City Commission has approved by a majority the renaming of the athletic fields at Mitchell Moore Park to Orange Bowl Field at Mitchell Moore Park.

C. Completion of the Project is in furtherance of the City's goals and public purpose by improving community activity and enhancement of a public park that provides quality of life of its residents and providing athletic facilities that are open to the general public, promoting the prevention of juvenile crime by providing positive recreation opportunities, and improving parks and natural areas. The Project will beautify the public space, improve community activity and create an asset for the people of Pompano Beach and surrounding areas that will last for

generations, all enhancing the quality of life in the City of Pompano Beach. The Project is to be located in an area of Mitchell Moore Park, which is owned by the City and which (other than the Project area and a reasonable safety zone around the Project) will remain open, accessible and available for the recreation, use and enjoyment of the public in general and will serve the municipal and public purposes set forth herein.

D. The OBMM desires to assist the City by constructing the Project and has agreed to make a charitable gift to fund the Project in an amount not to exceed to One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) (the "OBMM Contribution") for the direct and indirect costs of designing, planning, permitting, renovating, upgrading and constructing the Project and has agreed to make a charitable gift to the City as described in Section 6 (a) hereof in each case subject to completion by the City of the OBMM approved City Improvements in the amount of at least Three Million and 00/100 Dollars (\$3,000,000.00) paid by the City with respect to the City Improvements, subject to the terms, conditions, and reservations of this Agreement.

E. The City has determined that the construction of the Project will promote community activity for the citizens of the City.

F. The City has determined that construction of this Project will primarily benefit the general public because the Project will be owned by the City and used by the general public as a municipal park, and development of the Project are in furtherance of the City's goals of improving the quality of life for its residents by providing athletic facilities that are open to the general public, preserving property values, promoting the prevention of juvenile crime by providing positive recreation opportunities, and improving parks and natural areas.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, OBMM and the City hereby agree that the foregoing recitals are true and correct and further agree as follows:

1. Incorporation by Reference. The recitals set forth in the preamble to this Agreement are incorporated by reference as though set forth in full herein and made a part hereof.

2. Naming of Project. In consideration of the funds committed by the OBMM and other undertakings by the OBMM hereunder, the City hereby agrees on behalf of itself and its successors and assigns that the athletic fields at Mitchell Moore Park shall be re-named and designated as the "Orange Bowl Field at Mitchell Moore Park." All signage to be installed by OBMM on the Property shall comply with the City of Pompano Beach Code (the "City Code"), as applicable, as approved by City Commission Resolution Number 2021-454.

3. Ownership of Improvements: The parties agree that the City shall remain the fee simple owner of the Property and shall become the owner of all other improvements related, incidental or allied to the Project after the completion of construction and renovations by the OBMM and upon acceptance of the Project by the City, which shall be defined as the receipt and approval of "as built" drawings, receipt of all warranties in the name of the City of Pompano Beach, and final release of all subcontractor and supplier liens by the City Manager. At the conclusion of the construction of the Project, the OBMM will deliver to the City the following items: (i) one (1) set by electronic copy of "as built" plans and specifications for the Project; (ii) a duly executed assignment to the City of all warranties applicable to the Project, including any

warranties contained in the construction contract; and (iii) a bill of sale substantially in the form of Exhibit C conveying title to the OBMM Project improvements to the City, free and clear of all liens and encumbrances.

4. Subsequent Maintenance. The City agrees to maintain the Project and ancillary facilities in accordance with its normal maintenance and repair schedule. In addition, as part of the OBMM Contribution is the aggregate sum of \$160,000.00 (the "Maintenance Funds") to be retained by OBMM and used by OBMM for enhanced monthly maintenance and repair of the athletic fields and routine maintenance of the OBMM installed signage after completion for a period of eight (8) years. This additional maintenance is intended to supplement the City's normal maintenance and repair of the Project facilities. From and after completion of the Project and to the extent of the Maintenance Funds, OBMM agrees to contract annually with a maintenance service company to provide the monthly maintenance of the fields and signage to augment the City's customary maintenance, which service company is subject to the approval of the City not to be unreasonably withheld or delayed.

5. Initial Due Diligence; Commencement of Project Improvements.

(a) In order to ensure there are no unknown conditions existing on, in or around the Property which might impact significantly on the estimated costs of the Project, including, without limitation, any existing contamination of, or other environmental problem or issue with, the Property, the City, at its cost and expense, shall promptly retain an Environmental Professional meeting the ASTM E1527-13 parameters to conduct a Phase I Environmental Site Assessment (the "Phase I"), and a clean Phase I shall be provided to OBMM prior to its commencement of construction as a condition precedent to OBMM's obligations under this Agreement. Upon receipt of the Phase I Environmental Site Assessment, representatives of the OBMM and the City shall promptly meet to review the findings in such assessment and determine whether there are reasonable grounds to have a Phase II Environmental Site Assessment to be conducted, provided that the final decision as to whether to perform the Phase II Environmental Site Assessment shall be made by the City. Within fourteen (14) days after receipt of the Phase I and/or a Phase II Environmental Site Assessment, as the case may be, the parties' representatives shall meet to review the findings of such assessment(s) and determine whether any reasonable grounds exist to not proceed with the Project contemplated by this Agreement. If the parties determine that reasonable grounds exist to not proceed with the Project, the parties will sign a document acknowledging their joint determination not to proceed, and thereafter this Agreement will terminate without liability to either party.

(b) The parties acknowledge that the City is in the midst of the City Improvements on the Property which it shall continue to completion at its sole cost and expense in accordance with the specifications set forth in Exhibit A-2 hereto and for which it shall be solely responsible. Upon completion of each segment of the City's Improvements as outlined on Exhibit A-2, the City Manager shall provide to the OBMM's third party project manager (the "Project Manager"), Republic Real Estate Advisors, Inc. for its review and approval to ensure that the quality standards have been met, provided, that, it is acknowledged and agreed that such inspection is not intended to approve the design or construction, but just general conformance with the performance specifications and intended quality parameters, and OBMM does not assume, and shall have no liability for, any obligation that the City Improvements are in accordance with applicable laws (building or otherwise) or free from latent or patent defects. At such time as OBMM is reasonably satisfied that the City Improvements are or will be substantially complete and will not interfere with the work to be undertaken by OBMM have been substantially completed, OBMM shall commence the Project at its cost and expense.

6. Construction Funding.

(a) The estimated costs for the various segments of the Project are set forth on Exhibit A-1, which currently amount to an estimated \$810,000.00, leaving an approximate balance of \$650,000.00 to cover (i) the proposed raising and enhancement of the scoreboard so it is clearly visible from I-95; (ii) the custom field logo at mid-field, and (iii) any OBMM cost overruns. If the OBMM Contribution has not been exhausted after the complete construction of the Project (including, without limitation, punch-list items) and acceptance of the Project by the City, the OBMM shall make a charitable donation to the City of any such unused funds, which donation shall be in the form of a restricted gift to be used by the City to reimburse the City for the athletic field improvements portion of the City's Improvements as set forth on Exhibit A-2 (the "Restricted Gift"). If there are additional funds still available, then, the OBMM and City shall mutually identify the additional City's Improvements to be reimbursed in addition to the athletic fields.

(b) Any contributions, donations or sponsorships obtained by OBMM from third parties for the Project shall be credited to the OBMM Contribution (collectively, the "Third Party Donations") unless otherwise mutually agreed by OBMM and the City. The OBMM may request the installation of signage acknowledging the generous contributions of such third-party donors for the construction of the Project or elements thereof, subject to the prior approval of the City (not to be unreasonably withheld or delayed), which signage shall comply with the City Code, as applicable.

(c) All commemorative donor signage for the Project is subject to the prior approval of the City and OBMM (not to be unreasonably withheld or delayed) (including, but not limited to, the Orange Bowl logo on the front of the enhanced scoreboard and the front and back of the elevated press box, in each case clearly visible to drivers on I-95, the Orange Bowl field logo at mid-field on the football field, football field press box, new shade awnings, tarps on fencing and, if desired by the OBC, directional signage at the Property entrance and any additional commemorative donor signage. All commemorative donor signage will comply with the City Code, as applicable to OBMM.

7. Construction Plans.

(a) The OBMM has agreed to the development of the Project substantially in accordance with the Contemplated Scope of Improvements as further described in the attached Exhibit D, as the same may be modified by mutual written agreement between the City Manager and the OBMM (as the same may be amended, the "Schematic Design and Contemplated Scope"). Based on the Contemplated Scope, the OBMM shall arrange to provide construction plans and documents that additionally comply with the City Code, the Florida Building Code and all other applicable local, state and federal laws. The City, acting by and through the City Manager or his/her designee, shall review and approve all subsequent design documents pertaining to the Project, which approval shall not be unreasonably withheld, conditioned or delayed. Throughout the design process, the OBMM shall use its commercially reasonable efforts to ensure that the Project can be built within the OBMM Contribution, and shall, if mutually approved by the OBMM and the City Manager, make periodic adjustments to the Contemplated Scope as necessary.

(b) OBMM hereby agrees to provide final detailed construction plans, specifications and related documents pertaining to the Project in a manner consistent with the Contemplated

Scope, as the same may be amended as provide above (the "Construction Documents"). The Construction Documents shall include all design, engineering and consultants' plans needed for completion of the Project. The OBMM will consult periodically with the City Manager or his/her designee during the completion of Construction Documents, and the OBMM will duly consider the input of the City Manager or his/her designee. All decisions with regard to modifications of the Construction Documents shall rest with the OBMM, but OBMM will notify the City of the modifications. In order to coordinate the Project with the City Improvements, attached as Exhibit A-2 are the current construction plans, specifications and related documents pertaining to the City Improvements. Any alterations thereof shall promptly be submitted to OBMM's Project Manager.

8. Final Construction Documents Review and Options.

(a) The Project Manager will forward the design documents and Construction Documents to the OBMM and the City for their respective review and approval as to consistency with the Contemplated Scope, and said approvals shall not be unreasonably withheld, conditioned or delayed. The timing for the City's review of the documents shall be as soon as feasible, but in no event later than the following time periods:

- Design development – City will have ten (10) days after receipt to review and approve
- 100% Construction Documents - City will have ten (10) days after receipt to review and approve

In the event that the City fails to notify the Project Manager of the City's approval or disapproval within the time period specified for review and approval, the Construction Documents will be deemed approved without the necessity of further action of the parties.

(b) The OBMM shall have full right to approve, reject, negotiate or otherwise take any action or decision it deems appropriate as to any and all construction bids prior to acceptance by the OBMM. In the event that all of the construction bid(s) exceed the OBMM Contribution, then the OBMM may: (i) seek additional bids from additional contractors, (ii) approve nonmaterial or non-substantial changes in the scope of work and/or Construction Documents that will reduce the Construction Cost to the OBMM Contribution, (iii) seek additional donor funds, or (iv) promptly decline to implement construction of the Project by written notice to the City, without liability or penalty to either party.

9. Construction Schedule; Commencement of Construction.

(a) No work shall be commenced on the Project by OBMM until it is satisfied that the City Improvements are or will be substantially complete and will not interfere with the work to be undertaken by OBMM. The City shall allow OBMM's Project Manager reasonable access to assist OBMM in making such a determination. Thereafter, OBMM shall promptly submit to the City Manager or his/her designee a critical path construction schedule from the Project Manager within fourteen (14) calendar days after the Notice of Award is issued to the construction contractor for the Project. The construction schedule submittal shall be subject to review and comment by the City Manager. Subsequent to the City's review of, and comment on, the construction schedule, such schedule will serve as the baseline schedule for the Project. The Project Manager shall provide an updated schedule to OBMM and the City if there are any material changes in the schedule.

(b) The City agrees to make the Project site area, construction staging area and a reasonable safety zone ("boundaries of work") around the Project available for commencement of construction no later than thirty (30) after execution of this Agreement as mutually agreed, along with reasonable egress and ingress to the Project site as to be set forth in the Construction Documents. The "boundaries of the work" shall be sufficient to properly undertake the necessary construction activities for the Project within the Property on a safe basis.

10. Construction Responsibility; Draw Requests.

(a) The OBMM shall be responsible for the construction of the Project substantially in accordance with the approved Construction Documents at its cost and expense. The OBMM shall appoint a Project Manager to coordinate all construction activities on its behalf. The City hereby designates the City Manager as the party to act on the City's behalf in connection with the activities contemplated by this Agreement.

(b) The City has taken all lawful measures to waive public procurement in accordance with applicable laws so that the OBMM shall not be subject to the public procurement bidding and procedure laws otherwise applicable to the City for the Project. It is further acknowledged and agreed that any applicable bidding processes is not required with respect to the Project pursuant to Fla. Stat. § 255.20(1)(c)(7). In addition, the City represents and warrants to OBMM that the Property has all appropriate zoning necessary for the Project.

(c) The City further covenants and agrees that it shall immediately deliver to the OBMM all available as-built plans and information regarding the Property (in whatever format is available); facilitate the issuance by the appropriate agencies of all required building and other permits necessary for the Project; and actively assist and cooperate with the OBMM throughout the construction process, including, without limitation, providing assistance on permitting and access to relevant public documents with respect to the Property.

11. Insurance and Bonding; Indemnity and Hold Harmless.

(a) Insurance and Bonding. The parties acknowledge and agree that there will be one (1) prime contractor (the "Prime Contractor").

(b) OBMM acknowledges and agrees that the work to be performed pursuant to this Agreement is for the design and construction of public facilities and that the OBMM shall ensure compliance by the Prime Contractor with the requirements of Section 255.05, Florida Statutes, including, but not limited to, the provision of bonds and payment of claims, provided, that, no bonds shall be required from the OBC or third parties whose estimated scope of work is \$250,000.00 or less. OBMM hereby waives, releases and relinquishes any right to claim or file a construction lien against the Project or the Property including, but not limited to, any rights OBMM may have under Chapter 713, Florida Statutes. OBMM shall include a provision substantially similar to this subsection in each of its contracts, subcontracts and purchase orders, requiring contractors, subcontractors and vendors to waive any claim or entitlement to a construction lien on the Project or the Property and to look solely to the credit of OBMM or its surety for payment of any sums due on the Project or the Property.

(c) Prior to commencing the construction of the Project, the OBMM shall provide the City's Risk Manager with evidence, consisting of certificates of insurance and bonds issued by Florida insurers and/or sureties rated A- or better per A.M. Best's Key Rating Guide, latest edition, for the Prime Contractor. The Prime Contractor and OBMM must carry and maintain

throughout the Project and at least until final completion and acceptance of the work, all lines of insurance coverage as depicted in Exhibit E "Insurance and Bonding Requirements" contained herein, and the Prime Contractor shall provide the Payment and Performance Bonds to be provided by the general contractor in substantially the form prescribed for a public construction bond by Section 255.05, Fla. Stat. (2012), guaranteeing performance of this Agreement and payment of all subcontractors, material persons, and suppliers as set forth herein. As municipal property cannot be encumbered or liened under Florida Law, the Payment and Performance Bonds provided by the Prime Contractor must be equal to the construction bid amount. All insurance policies (other than workers' compensation) to be maintained hereunder shall be on an "occurrence" basis. The City, OBMM and the Orange Bowl Committee, Inc. must be named as additional insureds and obligees on the Payment and Performance Bonds. The amount of insurance coverage required from the Prime Contractor and OBMM will not be less than the amounts set forth in Exhibit E "Insurance and Bonding Requirements," attached hereto and made a part hereof. Subcontractors providing smaller levels of service than that provided by the Prime Contractor shall also be required to maintain the insurance coverage as depicted in Exhibit E. The OBMM shall furnish to the City's Risk Manager certificates of insurance evidencing the coverage required hereunder and the required Payment and Performance Bond from the Prime Contractor for the City's Risk Manager to review, comment and approve at least thirty (30) days prior to commencement of construction of the Project being funded by the OBMM. All such policies shall be endorsed to name the City, OBMM and the Orange Bowl Committee, Inc. as additional insureds thereunder (other than workers compensation) and to provide that the City and the OBMM shall be given thirty (30) days prior written notice of any cancellation, lapse, or material modification of said insurance coverage and/or bond or, if the insurer will not do so, the covenant of the Prime Contractor to provide such written notice.

(d) Indemnification. The OBMM shall indemnify, defend and hold harmless the City, and its elected officials, officers, and employees, whether *sui juris* or not, from any and all actions, claims, demands, costs, expenses, liabilities or damages arising or accruing by virtue of the negligent acts or omissions of the OBMM, its officers, directors, and employees. This indemnification includes, without limitation, any and all claims for personal injury, wrongful death, damage to or loss of property, or violation of applicable laws arising therefrom. The duty to defend may be complied with by selecting defense counsel, reasonably acceptable to the City, the cost of which shall be borne by the OBMM. The obligations under this section shall survive the expiration or termination of this Agreement. The OBMM covenants to provide in each of its contracts with the Prime Contractor and the architectural firm that the City shall be indemnified in connection with this Agreement and all such contracts shall comply with Section 725.06(2) and/or Section 725.08(1), Florida Statutes, as applicable.

(e) Indemnity Procedure. In the event any person or entity not a party to this Agreement brings a third-party action demand, claim or suit against the City which gives rise to a claim by the City under this Section 11(d), the City shall give written notice to such effect to the OBMM promptly upon becoming aware thereof, including with such notice all correspondence and documents in the possession of the City or its agents relating thereto. In such event, within five (5) business days after written notice to the OBMM (the "Notice") of such demand, claim or lawsuit, or if no such Notice is given, within five (5) business days of becoming aware thereof, the OBMM shall have the obligation, at its sole cost and expense, to retain counsel to defend such action (which counsel shall be reasonably satisfactory to the City), to defend any such demand, claim or lawsuit.

(f) City Improvements; Environmental Site Conditions. The parties acknowledge and agree that (i) the OBMM is not an owner, operator or lessee of the Project or Property; (ii)

the OBMM shall have no responsibility for any and all site conditions, including, without limitation, methane gas; environmental conditions; hazardous materials not introduced onto the Property by OBMM, unforeseen site conditions; subsurface or otherwise concealed physical conditions which differ materially from those indicated or assumed in any of the as-built plans provided by the City; and unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in the type of construction involved in the Project. OBMM shall have no responsibility or liability with respect to the City Improvements, it being acknowledged and agreed that these are being conducted solely by the City. In addition, OBMM shall also not be responsible for any dewatering activities necessary to construct the Project and shall have no obligation or responsibility whatsoever to correct any such conditions or to remediate any environmental conditions, problems or issues that may exist or arise at the Property or with respect to the City Improvements. This Section shall survive any termination or expiration of this Agreement. Notwithstanding the foregoing, the OBMM shall be responsible for any environmental contamination first introduced on the Property by OBMM or its Prime Contractor. The City agrees to amend all of its third-party contracts relating to the City Improvements to provide an acknowledgment and agreement of such third parties to the effect that OBMM shall have no responsibility or liability with respect to the City Improvements, it being acknowledged and agreed that these are being conducted solely by the City and not OBMM.

12. Compliance with Laws. The OBMM and its Prime Contractor shall at all times comply with all applicable municipal, state and federal laws, ordinances, codes, statutes, rules and regulations and approved development orders, if any. OBMM also agrees its contractors and subcontractors shall comply with all applicable provisions of Section 448.095, Florida Statutes, "Employment Eligibility." This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees.

13. Miscellaneous.

(a) Enforcement. The provisions of this Agreement may be enforced by all appropriate actions in law and in equity by any party to this Agreement. **IN ORDER TO EXPEDITE THE CONCLUSION OF THE ACTIONS BROUGHT PURSUANT TO THIS AGREEMENT, THE PARTIES, THEIR SUCCESSORS AND ASSIGNS HEREBY WAIVE THEIR RIGHT TO TRIAL BY JURY.** Each party shall bear their own respective attorney's fees, provided, that, a court of competent jurisdiction may award costs to a prevailing party.

(b) Counterparts. This Agreement may be executed in any number of counterparts and by the separate parties hereto in separate counterparts, each of which when taken together shall be deemed to be one and the same instrument.

(c) No Personal Liability of City. OBMM acknowledges that this Agreement is entered into by a municipal corporation and that no City official or employee shall have any personal liability under this Agreement or under any document executed in connection with the transactions contemplated by this Agreement.

(d) Police/Regulatory Powers. The City cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights or obligations as they may relate to municipal, state and federal laws, ordinances, codes, statutes, rules and regulations applicable to the Property or any operations at the Property. Nothing in this Agreement shall be deemed to create an affirmative duty of the City to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or

taking any other action in accordance with its own municipal laws. In addition, nothing in this Agreement shall be considered zoning by contract.

(e) City Officials. The "City" is a municipal corporation and the City Manager, as its Chief Administrative Officer, is empowered to make all decisions with regard to this Agreement on behalf of the City, unless otherwise provided by law or by resolution of the City Commission. The City Manager may delegate any City action under this Agreement to another City designee communicated in writing to OBMM under Section 13(h) below.

(f) Successors and Assigns. This Agreement may not be assigned, sold, pledged, hypothecated or encumbered by OBMM or the City, in whole or in part, without the prior approval of the other party. The City is relying on the commitment, skill and reputation of the OBMM in engaging professionals to perform the work contemplated by the Project.

(g) Construction of Agreement. The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation hereof. All of the parties to this Agreement have participated fully in the negotiation of this Agreement, and accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto. In construing this Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular, and reference to any particular gender shall be held to include every other and all genders.

(h) Notices. Any and all notices required or desired to be given hereunder shall be in writing and shall be deemed to have been duly given when delivered by hand (including recognized overnight courier services, such as Federal Express), facsimile or email if a business day or, if not, on the next business day or four (4) business days after deposit in the United States mail, by registered or certified mail, return receipt requested, postage prepaid, and addressed to the recipient at the address for such party set forth in the introductory paragraph to this Agreement (or to such other address as any party hereunder shall hereafter specify to the other in writing).

City of Pompano Beach:

The City Manager
100 West Atlantic Blvd., 4th Floor East
Pompano Beach, FL 33060
(954) 786-4609
Email: greg.harrison@copbfl.com

With a copy to:

Mark E. Berman
City Attorney
100 West Atlantic Boulevard
Pompano Beach, Florida 33060
Email: mark.berman@copbfl.com

OBMM:

14360 NW 77th Court
Miami Lakes FL 33016
Attn: Brian Park
Email: BPark@OrangeBowl.org
Fax: 305-341-4755

With a copy to:

Watts-FitzGerald Law, PLLC
2800 Ponce de Leon Blvd., Suite 1400
Coral Gables, FL 33134
Attn: Abigail C. Watts-FitzGerald
Email: awf@wattsfitz-law.com
Fax: 305-374-8202

(i) Severability. In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the

remainder of this Agreement shall be construed in full force and effect.

(j) Exhibits. All of the Exhibits attached to this Agreement are incorporated herein and made a part of this Agreement. All references to this Agreement shall include such Exhibits.

(k) Amendments. This Agreement may not be amended or modified except by written agreement of the parties hereto. Furthermore, no modification or amendment by the City shall be effective unless in writing and executed by the parties, employing the same formalities as were used in the execution of this Agreement.

(l) Limitation of Damages. IRRESPECTIVE OF THE TERMS CONTAINED HEREIN OR OTHERWISE, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, PUNITIVE, INDIRECT, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE ACTIONS TAKEN HEREUNDER.

(m) Sovereign Immunity. Nothing herein shall constitute a waiver of sovereign immunity by the City of Pompano Beach or extend the City's liability beyond the limits established in Section 768.28, Florida Statutes, as amended.

14. Default.

(a) In the event of a material default, which is not cured within the time periods set forth below, the parties shall have all rights and remedies provided by law or in equity.

(b) This Agreement and/or the OBMM's funding obligations under this Agreement may be terminated for cause (i) at the option of and by the City Manager, if any material default is not cured by the OBMM or the OBMM does not comply with any material terms, covenants or condition provided herein within thirty (30) days from the date of a written notice from the City Manager describing in reasonable detail such default or failure to comply, provided that, if such default or failure to comply reasonably requires a greater period of time to cure, than such 30-day period shall be extended, provided, that, OBMM promptly commences to cure, prosecutes with all due diligence such cure and completes such cure within one hundred and eighty days (180); or (ii) when, in the opinion of the City Commission, termination is necessary to protect the interests of public health, safety or general welfare. This subsection shall not apply any defaults arising due to a force majeure (as hereinafter defined) event or during any period of force majeure extension pursuant to Section 18 below. Notwithstanding the foregoing, OBMM shall not be liable in the event that any such default or failure is due to any work by the city on the field drainage underground work, any force majeure event, environmental conditions, hazardous materials not introduced onto the Property by OBMM, unforeseen site conditions; subsurface or otherwise concealed physical conditions which differ materially from those indicated or assumed in any of the as-built plans provided by the City; and unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in the type of construction involved in the Project, unknown conditions.

(c) Termination for cause may also include, without limitation, any of the following:

(i) The OBMM's Prime Contractor fails to obtain or maintain in place during the Project the insurance or bonding herein required which is not cured within thirty (30) days of written notice thereof.

(ii) A mechanics, laborers or similar lien is placed upon the Property or Project or other City-owned property due to actions of the OBMM and/or its Prime Contractor and is not contested, bonded, or discharged by the OBMM or the Prime Contractor within sixty (60) days of its recordation.

(iii) Unless due to a force majeure, an unforeseen circumstance or any latent conditions, the OBMM and/or its' Prime Contractor fail to comply with any of its material duties under this Agreement within thirty (30) days from the date of a written notice from the City Manager describing in reasonable detail such default or failure to comply, provided, that, if such default or failure to comply reasonably requires a greater period of time to cure, than such 30-day period shall be extended, provided, that, OBMM and/or its Prime Contractor promptly commences to cure and prosecute with all due diligence and fully completes such cure within one hundred and eighty (180) days.

(iv) The OBMM assigns, sells, or encumbers this Agreement or any interest therein without securing the prior approval of the City Commission which may be unreasonably withheld as this Agreement is personal to the OBMM and the City is relying on the unique characteristics and attributes of the OBMM and would not enter into this Agreement but for its involvement and undertakings.

(v) The City assigns, sells, or encumbers this Agreement or any interest therein without securing the prior approval of OBMM which may be unreasonably withheld as this Agreement is personal to the City and OBMM is relying on the unique characteristics and attributes of the City and would not enter into this Agreement but for its involvement and undertakings.

(d) OBMM shall have the right to terminate this Agreement without liability (i) in the event the City determines for any reason not to complete the City Improvements consistent with Exhibits A-2 or any material portion thereof in a timely manner, or (ii) in the event of a material default by the City which is not cured within thirty (30) days from the date of a written notice to the City Manager describing in reasonable detail such default or failure to comply, provided, that, if such default or failure to comply reasonably requires a greater period of time to cure, than such 30-day period shall be extended, provided, further, that, the City promptly commences to cure, prosecutes with all due diligence such cure and completes such cure within one hundred and eighty days (180), provided, however, that, if such delayed cure significantly raises the cost of OBMM in excess of the OBC Contribution, then OBMM shall nonetheless have the right to terminate this Agreement without liability.

15. Entire Agreement. This Agreement and the Exhibits hereto constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements, understandings and arrangements, both oral and written, between the parties with respect thereto.

16. Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of Florida. Venue for all actions under this Agreement shall be in Broward County, Florida.

17. No Joint Venture or Third-Party Beneficiaries. The OBMM is an independent contractor and is not an agent, joint venture, partner or affiliate of the City, nor can the City be

bound to honor any obligation or duty of the OBMM, except as expressly provided herein. Neither the City nor the OBMM intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

18. Force Majeure.

For purposes of this Agreement, "*force majeure*" means any action of any governmental or quasi-governmental entity (whether or not the action regulation, order or request proves to be invalid) that impacts on the Project, equipment failure if replacement equipment is not reasonably available, threatened terrorist acts, terrorist acts, act of public enemy, earthquake, war (declared or undeclared), fire, flood, epidemic, pandemic, explosion, unusually severe weather, hurricane, embargo, labor dispute or strike (whether legal or illegal), labor or material shortage, transportation interruption of any kind, work slow-down, civil disturbance, insurrection, riot, or any other similar or dissimilar cause beyond the reasonable control of OBMM or its Prime Contractor.

19. No Discrimination. The OBMM represents and warrants that there shall be no unlawful discrimination by it as provided by federal, state or local law, in connection with its performance under this Agreement, and it shall provide in all of its contracts between it and the Project's Prime Contractor, architects, and engineers, that such parties shall engage in no unlawful discrimination as prohibited by federal, state, or local law.

20. Authority of the Signatories. The undersigned executing this Agreement on behalf of a party have been duly authorized to execute and deliver this Agreement and to act on behalf of and bind such party.

21. Public Records.

(a) OBMM agrees to keep and maintain public records in OBMM's possession or control in connection with OBMM's performance under this Agreement. OBMM additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. OBMM shall 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, and following completion of this Agreement until the records are transferred to the City.

(b) Upon request from the City's custodian of public records, OBMM shall provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable period of time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

(c) Unless otherwise provided by law, any and all records, including, but not limited to, reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the City, but expressly excluding architectural drawings.

(d) Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to this Agreement in the possession of the OBMM shall be delivered by the OBMM to the City, at no cost to the City, within seven (7) days. All such

records stored electronically by OBMM shall be delivered to the City in a format that is compatible with the City's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the OBMM shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

(e) OBMM's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the City.

Section 119.0701(2)(a), Florida Statutes

IF THE OBMM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE OBMM'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Records: CITY CLERK

**Mailing address: 100 W. Atlantic Boulevard, Suite 253
Pompano Beach, Florida 33060**

Telephone number: 954-786-4611

Email: asceleta.hammond@copbfl.com

22. Audit Rights. During the term of this Agreement and for a period of three (3) years after completion of the Project, OBMM hereby grants City the right to audit any of OBMM's books, documents and papers that were generated pursuant to this Agreement and the performance of the services pursuant to this Agreement, which audit shall be at the cost and expense of the City and shall be conducted at OBMM's business location and in a manner so as to not unreasonably interfere with OBMM's or its affiliates' business operations. It may exercise this right by not less than fifteen (15) days prior written notice to OBMM.

23. Ownership of Project and Documents. The Project and all related, incidental and other Project improvements made at Mitchell Moore Park by virtue of this Agreement; all design, construction and other Project reports, tracings, drawings, plans, specifications, surveys, maps, computer data or media and other documents or data developed for this Project (other than architectural drawings) shall automatically become the property of the City without restriction, pledge, limitation or encumbrance.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURE PAGES FOLLOW]**

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

WITNESSES:

CITY OF POMPANO BEACH

[Witness type/print name]

By _____
Mayor

[Witness type/print name]

By _____
City Manager

(CORPORATE SEAL)

ATTEST:

City Clerk

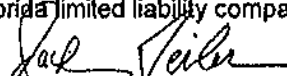
Approved as to form:

City Attorney

WITNESSES:

O.B. MITCHELL MOORE PARK, LLC
a Florida limited liability company


Print Name: Sarah Swartz

By: 
John P. Seiler
President

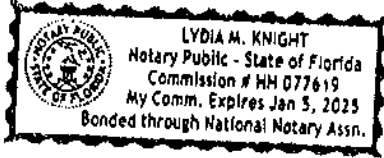

Print Name: BRIAN G. PARRIS

By: 
Eric Poms
Chief Executive Officer

STATE OF FLORIDA:
COUNTY OF MIAMI-DADE:

The foregoing instrument was acknowledged before me this 15th day of June, 2021, by John P. Seiler as President of O.B. Mitchell Moore Park, LLC, and Eric Poms as Chief Executive Officer on behalf of the company. They are personally known to me or have produced n/a and n/a as identification.

(SEAL)



Lydia M. Knight

Notary Public, State of Florida
(Signature of Notary taking
Acknowledgment)

Lydia M. Knight

Name of Notary Typed, Printed
or Stamped

My Commission Expires: *JANUARY 3, 2025*
Commission Number *HH047619*

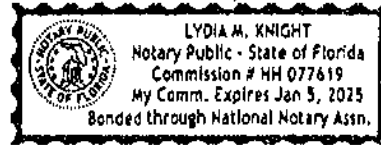


EXHIBIT A-1
OBMM IMPROVEMENTS

EXHIBIT A-2
CITY'S IMPROVEMENTS

EXHIBIT B
POMPANO ENABLING RESOLUTION

EXHIBIT C

FORM BILL OF SALE

ABSOLUTE BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, **O.B. MITCHELL MOORE PARK, LLC**, a Florida non-profit limited liability company (hereinafter called "GRANTOR"), with its principal office located at 14360 S.W. 77 Court, Miami, Florida, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, paid and delivered by **THE CITY OF POMPANO BEACH**, a municipal corporation of the State of Florida (hereinafter referred to as "GRANTEE"), with offices at 100 W Atlantic Blvd, Pompano Beach, Florida 33060, the receipt whereof is hereby acknowledged, has granted, bargained, sold, transferred and delivered, and by these presents does grant, bargain, sell, transfer and deliver unto the GRANTEE, its successors and assigns, the following:

Absolutely conveying title of that certain premises located at 901 NW 10th St, Pompano Beach, Florida 33060, known as Mitchell Moore Field, a municipal park owned by the Grantee (collectively, the "Property") and constructed under City of Pompano Beach Permit # _____ (the "Project"), and all improvements thereto, free and clear of all liens and encumbrances created by, through or under the GRANTOR related to the Project and improvements.

TO HAVE AND TO HOLD the same unto the GRANTEE, its successors and assigns forever.

IN WITNESS WHEREOF, the GRANTOR has hereunto set its hand and seal this ____ day of _____, 2021.

WITNESSETH:

O.B. MITCHELL MOORE PARK LLC, a Florida nonprofit limited liability company

Signature

Print name

By: _____
John P. Seiler
President

Signature

Print name

By: _____
Eric Poms
Chief Executive Officer

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this ___ day of _____, 2021, by John P. Seiler as President, and Eric Poms as Chief Executive Officer of O.B. Mitchell Moore Park, LLC, on behalf of the limited liability company. They are personally known to me or have produced _____ and _____ as identification and did/did not take an oath.

NOTARY PUBLIC

SERIAL NUMBER

PRINT NAME

EXHIBIT D

OBMM INITIAL CONTEMPLATED SCOPE OF IMPROVEMENTS

EXHIBIT E

INSURANCE AND BONDING REQUIREMENTS

- 1.1 Public Construction and Other Bonds: The Prime Contractor shall furnish Public Construction or Performance and Payment Bonds ("Bond"), which collectively are in an amount at least equal to the construction bid amount as security for the faithful performance and payment of all the Prime Contractor's obligations under its construction contract and other construction documents between such Prime Contractor and OBMM (the "Contract Documents"). These Bonds shall remain in effect until at least one (1) year after the date of final payment, except as otherwise provided by law. All Bonds shall be furnished and provided by the surety and shall be in substantially the same form as prescribed by this Agreement and be executed by such sureties as (i) are licensed to conduct business in the State of Florida, and (ii) are named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department, and (iii) otherwise meet the requirements set forth herein that apply to sureties. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.

Performance Bond: Corporate Surety Bonds legally issued, meeting the approval of, and running to, the City and OBMM in an amount not less than the construction bid amount of such improvements, conditioned that the Prime Contractor shall make all repairs to the improvements constructed by such Prime Contractor at its own expense and free of charge to the City and OBMM, for the period of one (1) year after the date of acceptance of the Project within such period by reason of any imperfection of the material used or by reason of any defective workmanship, or any improper, imperfect or defective preparation of the base upon which any such improvement shall be laid.

Disqualification of Surety: If the Surety on any Bond furnished by the Prime Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida or it ceases to meet the requirements of clauses (i) and (ii) of Paragraph 1.1 above, the Prime Contractor impacted thereby shall within fifteen (15) days thereafter substitute another Bond and Surety, both of which shall be reasonably acceptable to the City and OBMM.

Conditions Required in Contractor's Contract. Fla. Stat. § 255.05 provides for the following conditions to be made in all Performance and Payment Bonds relating to public projects, and these conditions shall be incorporated into the contract between OBMM and its Prime Contractor: (i) a claimant, except a laborer, who is not in privity with the OBMM and who has not received payment for his labor, materials, or supplies shall, within forty-five (45) days after beginning to furnish labor, materials, or supplies for the prosecution of the work, furnish the Prime Contractor with a notice that he intends to look to the bond for protection; (ii) a claimant who is not in privity with the OBMM and who has not received payment for his labor, materials, or supplies shall, within ninety (90) days after performance of the labor or after complete delivery of the materials or supplies, deliver to the OBMM and to the Surety written notice of the performance of the labor or delivery of the materials or supplies and of the non-payment; and (iii) no action for the labor, materials, or supplies may be instituted against the OBMM or the Surety unless both notices have been given. No action shall be instituted against the OBMM or the Surety on the bond after one (1) year after Final Acceptance. The OBMM shall ensure that the Prime

Contractor records the bonds and provides notice to subcontractors and suppliers, as required by Fla. Stat. § 255.05. Said payment and performance bonds shall be maintained in full force and effect for the duration of this Agreement.

1.2 Insurance

1.2.1 The Prime Contractor shall provide and shall require all of its sub-contractors to provide, pay for, and maintain in force at all times during the term of this Agreement such insurance, including Property Insurance (Builder's Risk), Commercial General Liability Insurance, Business Automobile Liability Insurance, Workers' Compensation Insurance, Employer's Liability Insurance, and Umbrella / Excess Liability, as stated below (provided, that, the subcontractors shall be required to meet the Minimum Insurance Coverage as provided below). Such policy or policies shall be issued by companies authorized to do business in the State of Florida and having agents upon whom service of process may be made in the State of Florida.

- A. The City, OBMM and the Orange Bowl Committee, Inc. are required to be named as additional insureds on the Commercial General Liability insurance policy. BINDERS ARE UNACCEPTABLE. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the Prime Contractor. Any exclusions or provisions in the insurance maintained by the Prime Contractor that precludes coverage for the work contemplated in this Agreement shall be deemed unacceptable and shall be considered a breach of contract.
- B. The Prime Contractor shall provide the City and OBMM an original Certificate of Insurance for policies required by this Exhibit G. All certificates shall state that the City and OBMM shall be given thirty (30) days notice prior to expiration, material modification or cancellation of the policy. The insurance provided shall be endorsed or amended to comply with this notice requirement, if permitted by insurer. In the event that the insurer is unable to accommodate, it shall be the responsibility of the Prime Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the Finance Department of the City and to OBMM's Chief Financial Officer. Such policies shall: (1) name the insurance company or companies affording coverage reasonably acceptable to the City and OBMM, (2) state the effective and expiration dates of the policies, (3) include special endorsements where necessary. Such policies provided under this Exhibit G shall not be affected by any other policy of insurance which the City or OBMM may carry in its own name.
- C. The Prime Contractor shall, as a condition precedent to entry into the construction contract, furnish to the City of Pompano Beach, c/o City Manager, Greg Harrison, 100 W. Atlantic Blvd, Pompano Beach, Florida 33060 and O.B. Mitchell Moore Park, LLC, c/o Chief Financial Officer, 14360 NW 77th Court, Miami Lakes, Florida 33016, Certificate(s) of Insurance upon execution of the construction contract, which indicate that insurance coverage has been obtained which meets the requirements as outlined herein:

1.2.2 Property Insurance (Builder's Risk): The Prime Contractor shall purchase and maintain property insurance upon the Work at or off the site in a reasonable amount given the scope of work. These policies shall insure the interest of the City, OBMM, contractor and subcontractors on the Project, and shall insure against "all risks" of physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage. All such insurance required by this paragraph shall remain in effect until the Project is completed and accepted by the City.

1.2.3 Commercial General Liability

- A. Limits of Liability:
- | | |
|---|-------------|
| Bodily Injury and Property Damage - Combined Single Limit | |
| Each Occurrence | \$1,000,000 |
| Project Aggregate | \$1,000,000 |
| General Aggregate | \$2,000,000 |
| Personal Injury | \$1,000,000 |
| Products/Completed Operations | \$1,000,000 |
- B. Endorsements Required:
- City of Pompano Beach, O.B. Mitchell Moore Park, LLC and the Orange Bowl Committee, Inc. included as an Additional Insureds
 - Broad Form Contractual Liability
 - Waiver of Subrogation
 - Premises/Operations
 - Products/Completed Operations
 - Independent Contractors
 - Owners and Contractors Protective Liability
 - Contractors Pollution Liability

1.2.4 Business Automobile Liability

- A. Limits of Liability:
- | | |
|---|-------------|
| Bodily Injury and Property Damage - Combined Single Limit | |
| All Autos used in completing the contract | |
| Including Hired, Borrowed or Non-Owned Autos | |
| Any One Accident | \$1,000,000 |
- B. Endorsements Required:
- Waiver of Subrogation

1.2.5 Workers' Compensation and Employer's Liability Insurance

Limits: Workers' Compensation – Per Florida Statute 440
Employers' Liability - \$500,000

Any firm performing work on behalf of the City of Pompano Beach must provide Workers' Compensation insurance. Exceptions and exemptions can only be made if they are in accordance with applicable Florida Statutes. For additional information contact the Department of Financial Services, Workers'

Compensation Division at (850) 413-1601 or on the web at www.fldfs.com.

The Prime Contractor must be in compliance with all applicable State and Federal workers' compensation laws, including, if applicable, the U.S. Longshore Harbor Workers' Act or Jones Act.

1.2.6 Umbrella / Excess Liability: The Prime Contractor shall provide umbrella / excess coverage with limits of no less than \$2,000,000 in excess of Commercial General Liability, Automobile Liability and Employer's Liability. Subcontractors shall not be obligated to provide umbrella/excess coverage.

1.2.7 All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The Prime Contractor's insurance must be provided by an A.M. Best's "A-" rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the City's Risk Manager (not to be unreasonably withheld), provided, that, if no approval or disapproval thereof is received within ten (10) days, such insurance companies shall be deemed accepted. Any exclusions or provisions in the insurance maintained by the Prime Contractor that precludes coverage for work contemplated in the Project shall be deemed unacceptable and shall be considered breach of contract.

NOTE: CITY PROJECT NUMBER MUST APPEAR ON EACH CERTIFICATE.

Compliance with the foregoing requirements shall not relieve the Prime Contractor of its liability and obligation under this section or under any other section of this Agreement.

The Prime Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the Project. If insurance certificates are scheduled to expire during the contractual period, the Prime Contractor shall be responsible for submitting new or renewed insurance certificates to the City and OBMM at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates that cover the contractual period, the City and/or OBMM shall:

- A. Suspend the Contract Documents until such time as the new or renewed certificates are received by the City and OBMM.
- B. The City or OBMM may, at its sole discretion, terminate the Contract Documents for cause and seek damages from such Prime Contractor in conjunction with the violation of the terms and conditions of the Contract Documents.