



**PUBLIC-PRIVATE PARTNERSHIP
MEMORANDUM OF AGREEMENT**

THIS MEMORANDUM OF AGREEMENT (“MOA”) is made this 8th day of November, 2021, in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, Department of Property and Procurement, on behalf of the Department of Sports, Parks and Recreation (hereinafter referred to as "Government") and St. Croix Education Initiative, Inc. (hereinafter referred to as “Community Partner” or “Children First St Croix”), each a “Party” and collectively the “Parties.”

WITNESSETH:

WHEREAS, Community Partner in collaboration with Play by Design, LLC is leading a volunteer community effort to rebuild and revitalize Midre Cummings Park in Frederiksted, St. Croix U.S. Virgin Islands (“Midre Cummings Park”); and

WHEREAS, the Government owns Midre Cummings Park identified on Exhibit A attached and made a part hereof, and seeks to forge a Public-Private Partnership with Community Partner under the provisions of 31 V.I.C. § 239(a)(8), in order for the Government to contribute to the rebuild and revitalization of Midre Cummings Park (the “Project”); and

WHEREAS, the Parties have a common interest in the revitalization of Midre Cummings Park and seek to combine efforts in furtherance of that common interest.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the Parties hereto do covenant and agree as follows:

1. TERM AND EFFECTIVE DATE

This MOA shall be effective upon the date of execution of this MOA by the Commissioner of the Department of Property and Procurement and shall remain in effect through the duration of the useful life of the Project equipment, as determined by the Government.

2. RESPONSIBILITIES/TASKS OF THE PARTIES

2.1 The Government will be responsible for the following:

- (a) The Government will contribute Four Hundred Thousand and 00/100 Dollars (**\$400,000.00**) for the Project, through a third – party fiduciary. Said contribution can only be used to directly support the Project and Government must approve Community Partner’s anticipated/proposed uses for the financial contribution;



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- (b) The Government will provide access to Midre Cummings Park to Community Partner and its collaborators on the Project;
- (c) The Government will assist Community Partner in obtaining all necessary building permits and applicable licenses necessary for the rebuild of the Midre Cummings Park and installation of playground equipment thereon;
- (d) The Government will prepare the site to include; identification of the designated project space, ground preparation for equipment, removal of existing equipment and risk mitigation of the soil, if deemed necessary;
- (e) Upon completion of the construction and rebuild of the Midre Cummings Park, the Government will be solely responsible for all maintenance associated with the Midre Cummings Park to ensure, to the extent reasonably possible, a safe and attractive space; and
- (f) The Government will collaborate with Community Partner on all promotional materials, press releases, fliers, and media coverage.

2.2 St. Croix Education Initiative, Inc. will be responsible for the following:

- (a) Community Partner will provide technical and organizational leadership and guidance, to oversee the rebuild of Midre Cummings Park as outlined in the rendering attached hereto as Exhibit B and incorporated by reference to include:
 - i. Providing playground equipment, building materials, safety surfacing, site amenities in accordance with the final project design, which must be agreed to by Community Partner and the Government;
 - ii. Providing a budget breakdown to the Government to outline expected uses of the Government's financial contribution for the Government's approval;
 - iii. Engagement with Play by Design, LLC and oversight of Play by Design's role in the project;
 - iv. Installation of signage noting "Midre Cummings Playground Park sponsored by the Office of the Governor, the Department of Sports, Parks and Recreation and Children First St Croix";
 - v. Management of all construction logistics for the Project, assistance with coordination of site preparation activities, inventory of equipment and materials;
 - vi. Provision of tools and materials of the Project;
 - vii. Provision of educational and promotional materials to support the project;
 - viii. Inspection of the completed project by a Certified Playground Safety Inspector who will review the structure at the conclusion of the installation to ensure that the structure is safe and built to all manufacturer's standards and guidelines. A copy of the Safety Inspector Review shall be provided to the Community Partner within three (3) business days of completion. The Government will take possession when this requirement is satisfied;
 - ix. Preparation of promotional materials relating to the Project for the Government's review and approval, which approval shall not be unreasonably withheld or delayed; and



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- x. Turning the Project over to the Government upon the completion thereof.

3. RECORDS

Community Partner when applicable, will present documented precise records of time and/or money expended under this Contract and shall maintain all pertinent financial and accounting records pertaining to this Agreement in accordance with generally accepted accounting principles and other procedures.

4. LIABILITY OF OTHERS

Nothing in this MOA shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by Community Partner as servants, agents, or independent contractors, or in any other capacity whatsoever, or make Government liable to any such persons, firms associations, or corporations for the acts, omissions, liabilities, obligations and taxes of Contractor of whatsoever nature, including but not limited to unemployment insurance and social security taxes for Community Partner, its servants, agents or independent contractors.

5. ASSIGNMENT

Community Partner shall not subcontract or assign any part of the services under this MOA without the prior written consent of the Government.

6. INDEMNIFICATION

Community Partner agrees to indemnify, defend and hold harmless Government from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges and expense (including attorney's fees) and causes of action of whatsoever character which Government may incur, sustain or be subjected to, arising out of or in any way connected to the services to be performed by Community Partner under this MOA and arising from any cause, except the sole negligence of Government. For clarity, this indemnification will cover the time period of the community build, which is scheduled for November 12th-20th, 2021.

7. GOVERNING LAW

This MOA shall be governed by the laws of the United States Virgin Islands and jurisdiction shall remain in the United States Virgin Islands.

8. WAIVERS AND AMENDMENTS

No waiver, modification or amendment of any term condition or provision of this MOA shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly



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authorized representatives, and specifying with particularity the nature and extent of such waiver, modification or amendment. Any such waiver, modification or amendment in any instance or instances shall in no event be construed to be a general waiver, modification or amendment of any of the terms, conditions or provisions of this MOA, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings.

9. ENTIRE AGREEMENT

This MOA constitutes the entire agreement of the parties relating to the subject matter addressed in this agreement. This agreement supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed in this Agreement, whether written or oral.

10. CONDITION PRECEDENT

This MOA shall be subject to the availability and appropriation of funds and to the approval of the Commissioner of the Department of Property and Procurement.

11. TERMINATION

- (a) Any Party may terminate this Agreement upon fifteen (15) days' notice upon one or more of the following:
 - ii. any Party's violation of any federal, state, or local law or regulation.
 - iii. any Party's breach of any of the terms or conditions of this Agreement that has not been cured within thirty (30) days written notice of such breach.
- (b) A termination for convenience by any Party must occur upon sixty (60) days' notice prior to the groundbreaking at the Project site.
- (c) In the event of a termination, the Project and title to all equipment purchased by government funds will be turned over to the Government and any unspent portions of the Government's financial contribution shall be returned to the Government within five (5) days of said termination.

12. NON-DISCRIMINATION

No person shall be excluded from participating in, be denied the proceeds of or be subject to discrimination in the performance of this MOA on account of race, creed, color, sex, religion, disability or national origin.



13. CONFLICT OF INTEREST

Community Partner covenants that it has no interest and will not acquire any interest direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this MOA.

14. NOTICE

Any notice required to be given by the Terms of this MOA shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

GOVERNMENT
Anthony D. Thomas
Commissioner
Department of Property and Procurement
8201 Sub Base, Suite 4
St. Thomas U.S. Virgin Islands 00802
anthony.thomas@dpp.vi.gov

St. Croix Education Initiative, Inc.
John Hebert, Director
54 EST RIV
Kingshill VI 00850

Calvert A. White
Commissioner
Department of Sprots, Parks and Recreation
8201 Subbase, Suite 206
St. Thomas US Virgin Islands 00802
calvert.white@hpr.vi.gov

15. LICENSURE

Community Partner covenants that to the extent applicable, it has:

- ii. obtained all of the applicable licenses or permits, permanent, temporary or otherwise as required by Title 27 of the Virgin Islands Code;
- iii. familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations.

16. WARRANTY

Community Partner will provide the Government with copies of all warranties for the materials, playground equipment, fitness equipment and the safety-surfacing related to the Project from the applicable manufacturers at the conclusion of the project. The Government acknowledges that any warranties and/or guarantees on any equipment or material are subject to the respective manufacturer's terms thereof, and the Government agrees to look solely to such manufacturers for any such warranty and/or guarantee. Government agrees that Community Partner nor any of their respective parents, subsidiaries, affiliates,



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 directors, officers, managers, partners, members, shareholders, employees, agents or representatives, have made nor are in any manner responsible or liable for any representation, warranty or guarantee, express or implied, in fact or in law, relative to any equipment or material, including, without limitation, its quality, mechanical condition or fitness for a particular purpose.

17. FALSE CLAIMS

Community Partner warrants that it shall not, with respect to this MOA, make or present any claim upon or against the Government of the Virgin Islands, or any officer department, board, commission, or other agency thereof, knowing such claims to be false, fictitious or fraudulent. Community Partner acknowledges that making such a false, fictitious or fraudulent claim is an offence under Virgin Islands law.

18. FACSIMILE, ELECTRONIC & DIGITAL SIGNATURES

A facsimile, electronic or digital signature on this Contract shall be deemed an original and binding upon the Parties hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

WITNESSES:

GOVERNMENT OF THE VIRGIN ISLANDS

[Signature] 11/3/2021

Calvert White 11/2/2021
 Calvert A. White, Commissioner Date
 Department of Sports, Parks, and Recreation

[Signature]

Anthony D. Thomas 11/8/2021
 Anthony D. Thomas, Commissioner Date
 Department of Property and Procurement

[Signature]

[Signature]
 John Herbert, Director Date 10/27/21
 ST. CROIX EDUCATION INITIATIVE, INC.

APPROVED FOR LEGAL SUFFICIENCY
 VI Department of Justice

By: Carol E. McDermid
 Assistant Attorney General

Date: 11/8/2021

General Contract No. G007SPRT22

Initials: _____