

**AGREEMENT BETWEEN
PINELLAS COUNTY, FLORIDA
AND
TEAM SAVAGE, INC.**

THIS AGREEMENT (this "Agreement") is entered into by Pinellas County (the "County"), a political subdivision of the State of Florida, and Team Savage, Inc., d/b/a Cycle Springs Powersports ("Cycle Springs"), a Florida corporation whose principal address is 29703 U.S. Highway 19 North, Clearwater, FL 33761; collectively, the County and Cycle Springs are referred to herein as the "Parties."

WITNESSETH:

WHEREAS, Cycle Springs owns five contiguous parcels in unincorporated Clearwater, FL 33761, collectively referred to as the "Property": (1) 29703 U.S. Highway 19 North (Parcel ID #18-26-00000-430-0100); (2) 29747 U.S. Highway 19 North, Clearwater, FL 33761 (Parcel ID #18-26-00000-021-0010); (3) 2434 Highland Acres Drive (Parcel ID # 18-28-16-00000-430-0500); (4) 2438 Highland Acres Drive (Parcel ID #18-26-00000-430-0600); and (5) 2442 Highland Acres Drive (Parcel ID #18-26-0000-430-0900);

WHEREAS, in Summer 2016, after receiving County Building Permit #CB16-03871, Cycle Springs constructed a building over a County drainage easement, recorded at Plat Book 51, Page 19; a now-obstructed stormwater pipe lies under this easement (the "Obstructed Pipe");

WHEREAS, the County requires access to the Obstructed Pipe or a suitable replacement pipe to fulfill its stormwater management service obligations;

WHEREAS, the Parties dispute who is at fault for the Obstructed Pipe;

WHEREAS, rather than engage in protracted and costly litigation, the Parties have agreed to equally divide the cost of a replacement pipe (the "Replacement Pipe") to be constructed by the County in proximity to the Obstructed Pipe;

WHEREAS, because the County would need to bear all the costs to construct a replacement pipe at the end of the Obstructed Pipe's useful life anyway, this solution will ultimately benefit taxpayers; and

WHEREAS, the location of the Replacement Pipe is designed to minimize disruption to Cycle Springs during and after construction, thereby providing an added benefit to Cycle Springs.

NOW THEREFORE, in consideration of the mutual terms, covenants, and conditions set forth herein, the Parties agree as follows:

1. Cycle Springs' Obligations:

Cycle Springs shall pay the County an estimated \$250,836 to complete the Cycle Springs Drainage Improvement Project (the "Project"). The Project shall consist of installation of the Replacement Pipe, decommissioning of the Obstructed Pipe, and other tasks reasonably necessary in the County's discretion to accomplish same. The approximate locations of the Replacement Pipe and Obstructed Pipe are depicted on the aerial attached hereto as Exhibit A; estimated total Project construction costs (totaling \$363,558.30) are reflected in the Project Construction Budget Worksheet attached hereto as Exhibit B.

Within thirty (30) days of the effective date of this Agreement, Cycle Springs shall deliver a certified check (the "Certified Check") for \$250,836 to the County; this figure constitutes Cycle Springs' estimated total share for Project engineering, inspection, and construction costs. The Certified Check shall be made out to the Pinellas County Board of County Commissioners with a notation for County PID #004090A. The Certified Check, and any other payments due from Cycle Springs hereunder, shall be delivered via USPS Certified Mail to: Pinellas County Clerk of the Circuit Court Finance, Attn: Angela Oxley, Assistant Director, 14 South Fort Harrison Avenue, Clearwater, FL 33756. Cycle Springs' ultimate financial responsibility for the Project is subject to change based on actual total Project construction costs incurred by the County, as described in Section Two (2) below.

Cycle Springs shall grant the County perpetual drainage easement(s), suitable to the County in form and substance, over any areas of the Property where the Replacement Pipe is located. Cycle Springs shall also grant the County a temporary ingress and egress easement, suitable to the County in form and substance, that permits traffic to be diverted from Highland Acre Drive to 297th Avenue North during Project construction. The requisite drainage easement(s) and temporary ingress and egress easement are collectively referred to herein as the "Easements." The County is in possession of draft Easements that are yet to be recorded. Promptly upon receipt of written confirmation from the County that the Easements are acceptable, Cycle Springs shall record the Easements. The County reserves the right to require different or revised easements in furtherance of the Project.

Within thirty (30) days of the effective date of this Agreement, Cycle Springs shall file a petition to vacate the portion of the existing 12' drainage easement recorded at Plat Book 51, Page 19 covering the Obstructed Pipe. The County intends to vacate this existing drainage easement; however, vacation of such easement is not required to complete the Project or otherwise satisfy the County's obligations hereunder. Moreover, any such vacation may not be finalized until the Project is completed.

If the County submits an invoice for construction cost overages with the notice of Project completion per Section Two (2) below, Cycle Springs shall fully pay such invoice within thirty days of receipt.

2. The County's Obligations:

After Cycle Springs delivers the Certified Check and records the Easements, the County shall complete the Project. The County shall complete the Project within 365 days from the later date of: (1) the delivery of the Certified Check; or (2) the recordation of the Easements. However, the County shall not be responsible for delays caused by circumstances outside of the County's control.

The County has obtained permits from the State of Florida authorizing the Project. Cycle Springs understands that the State may revoke any of these permits (to the County) at any time. In the event of such revocation, the County may, at its option, terminate this Agreement; termination shall be effective immediately upon Cycle Springs' receipt of notice from the County.

After the County completes the Project, it shall deliver written notice of Project completion to Cycle Springs. Included within this notice shall be an accounting of actual total Project **construction** costs. If actual total Project construction costs are below \$363,558.30, the County shall refund 50% of the difference to Cycle Springs; such refund shall be included with the notice of Project completion. If actual total Project construction costs exceed \$363,558.30 by no more than 25% (\$90,889.58), the County shall invoice 50% of the difference to Cycle Springs; such invoice shall be included with the notice of Project completion. If actual total Project construction costs exceed \$363,558.30 by greater than or equal to 25% (\$90,889.58), the Parties shall promptly engage in good faith negotiations to determine a fair and equitable allocation of such overages; the amount allocated to Cycle Springs shall be invoiced together with the notice of Project completion. However, notwithstanding the preceding sentence, any overages attributable wholly to acts outside of the County's control, including but not limited to natural disasters, acts of war, or labor shortages, shall be allocated equally (50/50) between the Parties.

3. Mutual Waiver of Claims:

Each Party waives its right to seek legal relief from the other Party for any reasonably foreseeable claim arising from the Obstructed Pipe or this Agreement. This Agreement is intended to fully settle the dispute between the Parties concerning any and all liability for the Obstructed Pipe and matters related thereto. Cycle Springs understands that, following Project completion, the County expressly disclaims any and all responsibility and liability for the Obstructed Pipe, including but not limited to inspection, maintenance, repair, or removal thereof. This mutual waiver shall survive expiration of this Agreement. However, should this Agreement be terminated prior to expiration by either Party for any reason authorized herein, this mutual waiver shall not apply.

4. Agreement Term:

This Agreement is effective upon execution by both Parties.

Unless terminated in accordance with Section Five (5) below, this Agreement shall expire upon receipt by Cycle Springs of notice of Project completion or, if applicable, full payment by Cycle Springs of any invoiced construction cost overages per Section Two (2) above.

5. Termination:

In the event that either Party defaults in its performance of any of the terms and conditions stated herein, that Party shall have sixty (60) days from the date of receipt of written notice of such default from the other Party to cure such default. If, after the sixty (60) day period, the defaulting Party has not cured or remedied the default, the non-defaulting may send a notice of termination to the defaulting Party; this Agreement shall terminate upon the defaulting Party's receipt of such notice. Notwithstanding this right-to-terminate in light of default, the failure of either Party to require the performance of any term or obligation of this Agreement, or the waiver by either Party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

This Agreement may also be terminated by the County due to revocation of State permits in accordance with Section Two (2) above or failure of appropriation in accordance with Section Seven (7) below.

If this Agreement is terminated by either Party for any reason, the County shall refund to Cycle Springs any funds paid by Cycle Springs that the County has not expended or obligated in furtherance of this Agreement; conversely, if the County has incurred construction cost overages as described in Section Two (2) above, Cycle Springs shall pay its share of such overages. If, notwithstanding the termination of this Agreement, in the County's judgement, certain construction-in-progress must be completed to prevent flooding, Cycle Springs shall permit the County to complete such construction; in such event, Cycle Springs shall not be entitled to a refund of its (50%) share for such construction, or shall pay its share of overages for such construction per Section Two (2) above, as applicable.

6. Notice:

Except as otherwise expressly provided herein, all notices required hereunder shall be in writing and delivered via USPS Certified Mail. Notices (and payments) shall be considered delivered and received as reflected by certified mail delivery receipt. Notices shall be sent to the following addresses:

County
Kelli Hammer Levy
Director
Pinellas County Public Works Department
22211 U.S. Highway 19 North, Building 1, Second Floor
Clearwater, FL 33765

Cycle Springs
Martin Skapik
President
Team Savage, Inc.
491 Hammock Drive
Palm Harbor, FL 34683

7. Fiscal Non-Funding:

This Agreement is not a general obligation of the County. Cycle Springs understands that neither this Agreement nor any representation by any employee or officer of the County creates any obligation to appropriate or make monies available for the Project beyond the County Fiscal Year ending September 30, 2021. No liability shall be incurred by the County, or any department of the County, beyond the monies budgeted and available for the Project. If funds are not appropriated by the County for any part of the Project, the County shall not be obligated to complete the Project. The County agrees to promptly notify Cycle Springs in writing of such failure of appropriation; this Agreement shall terminate immediately upon Cycle Springs' receipt of such notice.

8. Indemnification:

Cycle Springs shall indemnify, defend, and hold harmless the County from all suits, actions, or claims of any character arising from the Project, excepting only those suits, actions, or claims resulting from the sole negligence of the County. Nothing herein is intended to serve as a waiver of the County's sovereign immunity or to extend the County's liability beyond the limits set forth in Section 768.28, Florida Statutes. Further, nothing herein shall be construed as consent by either Party to be sued by third parties in any manner arising out this Agreement or contracts related thereto.

9. Dispute Resolution

All claims, disputes, and controversies arising out of or in relation to the performance, interpretation, application, or enforcement of this Agreement, including but not limited to any breach thereof, shall be referred to non-binding mediation before, and as a condition precedent to, the initiation of any adjudicative action or proceeding.

10. Modification of Agreement:

This Agreement may be amended by mutual written agreement of the Parties at any time.

11. Assignment:

This Agreement may not be assigned by either Party without the prior written consent of the other Party.

12. Governing Laws:

This Agreement and the rights and obligations of the Parties hereto shall be governed and construed according to the Laws of the State of Florida. Any litigation related to this Agreement shall be filed in the Sixth Judicial Circuit of Florida.

13. Entire Agreement:

This document, including Exhibits hereto, embodies the whole agreement between the Parties. There are no promises, terms, conditions, or allegations, other than those contained herein, and this document shall supersede all previous communications, representations, and agreements, whether written or verbal, between the Parties.


14. Severability:

If any word, clause, sentence, paragraph, or section of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives on the dates below.

TEAM SAVAGE, INC., by and through its President

PINELLAS COUNTY, FLORIDA, by and through the Chair of its County Commission

By: 

By: _____

Print: Martin Skapik

Print: Dave Eggers, Chair

Date: 9/22/21

Date: _____

APPROVED AS TO FORM

By: Brendan Mackesey
Office of the County Attorney