

Expiration Date _____
Optional Renewals _____
Insurance Required ___ Y ___ N
Maximum Amt. of Contract
\$ _____
Terms _____



OFFICE OF PROCUREMENT
Two Centennial Plaza
805 Central Avenue, Suite 234
Cincinnati, Ohio 45202-1947

CONTRACT

BETWEEN

THE CITY OF CINCINNATI
PARTY OF THE FIRST PART
AND

PLAYGROUND EQUIPMENT SERVICES, L.L.C.

Party of the Second Part
3460 Oakmeadow Lane
Cincinnati, OH 45239
Phone No. 513-923-2333

Vendor Contact: Andy Barlow: eric@playgroundequipmentservices.com

START DATE
CONTRACT No. 243C009157
BID No. N/A
COMMODITY CLASS No. 90917
MATERIAL OR SERVICES
BOND HILL RECREATION
AREA TURF INFIELD
REQUIRED FOR
Cincinnati Recreation Commission
BUYER Margaret Allen-Elkanick
Margaret.Elkanick@cincinnati-oh.gov

DISTRIBUTION:

- Finance
- Contractor
- Purchasing
- Requisitioning Department
- Buyer

INSTRUCTIONS FOR EXECUTING CONTRACT

CONTRACT: The contract must be signed in full by the Contractor, as specified below, and returned to the City Purchasing Agent, Two Centennial Plaza, 805 Central Ave., Suite 234, Cincinnati, Ohio 45202-1947. A copy will be returned to the Contractor when fully executed by the City.

CORPORATION: If a corporation, the contract must be signed with full name of the corporation, followed by the **signature of the President, Vice-President, or persons authorized to bind it in the matter. Should other than the President or Vice-President sign the contract, authorization to bind the company must be evidenced by attaching a certified copy of the extracts of the minutes of this corporation.**

LLC: Under Ohio Revised Code Sec. 1705.25, LLCs are bound by the actions of either their members or, if the management of the LLC is NOT reserved to its members, by a manager of the LLC. **Contracts for LLCs must be signed by either a member or, if the management of the LLC is NOT reserved to its members, by a manager of the LLC. Indicate member or manager on signature line.**

PARTNERSHIP: If a partnership, the full name of all the partners composing the same must be given and the contract signed by one or more of the partners in the following manner:

"John Jones and James Smith, d.b.a.
Jones-Smith Company, by John Jones, a partner."

SOLE OWNERSHIP: If sole ownership, contract should be signed in the following manner:

"John Jones, Sole Owner."

BOND OR CERTIFIED CHECK: A bond or certified check must be submitted by the Contractor to guarantee the faithful performance of the contract on the form provided on the final sheet hereof.

INSTRUCTIONS FOR EXECUTING PERFORMANCE BOND

SURETY REQUIRED: The performance bond must be executed by an authorized surety, guaranty or trust company. The surety required must be in the amount specified on the final page. The City shall determine the amount and sufficiency of all sureties.

CORPORATE SURETY: If corporate surety is furnished, the surety or guaranty company must indicate in the bond the State in which it is incorporated. It is necessary that a certificate of authority authorizing the "attorney-in-fact" to sign the bond accompany the same, unless the certificate is on file in the office of the City Purchasing Agent, Cincinnati, Ohio.

MISCELLANEOUS REQUIREMENTS: If the principal is a "partnership", the names of all of the partners composing the same must be given, and the bond signed by one or more of the partners in the following manner: "John Jones and James Smith, d.b.a. Smith-Jones Company, by John Jones, a partner". All signatures must be in full. The bond must be witnessed. A certified check may be submitted in lieu of the bond, made payable to the Treasurer of the City of Cincinnati and drawn on a solvent bank.

GENERAL CONDITIONS AND TERMS OF AGREEMENT

- 1) **General:** The Legal Advertisement, General Conditions, Special Conditions, Instructions to Bidders, Specifications, Plans, Profiles or Drawings applying to the original proposal are made a part of the contract.
- 2) **Definitions:** The term "City" wherever used in the contract shall mean the City of Cincinnati, the party of the first part, acting through its City Manager or his properly authorized agent.

In the event that the contract is entered into in behalf of an independent board or commission, such as the Board of Park Commissioners, Recreation Commission, Board of Health, etc., wherever the term "City" or "City Manager" is used in the contract, conditions, specifications, or bond, it shall mean whatever independent board is concerned, acting through its president or his properly authorized agent.

The term "Contractor" wherever used in the contract shall mean the party of the second part entering into a contract with the City for furnishing materials, supplies, or equipment, or for the performance of the work set forth herein.
- 3) **Infringements and Indemnification:** The Contractor agrees to protect, defend, and save the City harmless against any demand for payment for the use of any patented material, process, article, or device that may enter into the manufacture, construction, or form a part of the work covered by the contract; and the Contractor further agrees to indemnify and save the City harmless from suits or actions of every nature and description brought against it for or on account of any injuries or damages received or sustained by any party or parties, by or from the acts of the Contractor, his servants, or agents.

To this extent the contractor agrees to furnish adequate Public Liability and Property Damage Insurance, the amount of which will be determined by the City, whenever such insurance is deemed necessary. When so required the types and amounts of insurance to be provided shall be set forth in the bid document.
- 4) **Default Provisions:** In case of default by the Contractor, the City of Cincinnati may procure the articles or services from other sources and hold the Contractor responsible for any excess costs occasioned thereby.
- 5) **Applicable Laws:** The Revised Code of the State of Ohio, the Charter of the City of Cincinnati, and all City ordinances, insofar as they apply to the laws of competitive bidding, contracts, and purchases are made a part hereof. All laws of the United States of America, the State of Ohio and the City of Cincinnati applicable to the products or services covered herein are made a part hereof.
- 6) **Workers' Compensation:** Insofar as Workers' Compensation Act is concerned, the Contractor agrees to furnish an official certificate or receipt of the Industrial Commission of Ohio, showing that he has paid into the State Insurance Fund the necessary premiums, whenever such certificates are required by the bid document.
- 7) **Delivery:** Unless otherwise stated in the proposal or contract, prices include delivery to the destination designated in the contract and include all charges for delivery, packing, crating, containers, etc.
- 8) **Taxes:** State and local governments no longer need to be certified under the Internal Revenue code but are automatically exempt from excise tax, therefore, the City's Certificate of Registry Number is no longer needed.

The Office of Procurement will continue to issue the exemption certificates upon request.
- 9) **Cash Discounts:** Time in connection with cash discounts offered, will be computed from date of delivery and acceptance at final destination or from date properly executed invoice is received, if the latter date is later than the date of delivery and acceptance.
- 10) **Invoices:** Must be prepared upon the standard invoice of the Contractor.
- 11) **Payments:** Partial payments may be made upon presentation of a properly executed invoice unless otherwise stated in the contract. The final payment will be made by the City when the materials, supplies, equipment or the work performed has been fully delivered or completed to the full satisfaction of the City.
- 12) **Policy of Non-Discrimination:**
 - a) **Disability:** The City of Cincinnati does not discriminate on the basis of disability in the admission or access to, or treatment or employment in its programs or activities. The Director of Personnel has been designated to coordinate compliance with the non-discrimination requirements contained in Section 35.107 of the Department of Justice regulations. Information concerning the provisions of the Americans with Disabilities Act (ADA), and the rights provided thereunder, are available from the ADA coordinator, at (513)352-2411.
 - b) **SBE Non-Discrimination Policy:** The City of Cincinnati is committed to a policy of non-discrimination pursuant to Section 1 of the Fourteenth Amendment to the United States Constitution and as outlined in the Offeror's Covenant of Non-Discrimination clause of the bid document, which guarantees equal protection of the laws to all citizens. It is further the policy of the City of Cincinnati that its purchasing and contracting practices not implicate the City as a passive participant in discriminatory practices engaged in by private contractors or vendors who seek to obtain business with the City. In furtherance of these policy objectives, the City seeks to afford to its citizens equal opportunities to do business on City contracts and to ensure that all bidders, proposers, vendors and contractors (collectively referred to herein as "bidders") doing business with the City provide to businesses owned and controlled by racial minorities and ethnic minorities and women, opportunities to participate on contracts which are paid, in whole or in part, with monetary appropriations from the city of Cincinnati.
- 13) **Ineligible Person(s):** Per City of Cincinnati Municipal Code Section 301-20 (Ordinance No. 366-1996), any person or affiliate who is on the City of Cincinnati's Financial Obligation Ineligibility List due to being delinquent in the payment of any financial obligation to the City, any of its Departments, Boards or Commissions, shall not be eligible for any City award. **This includes any person or affiliate who is delinquent in paying City of Cincinnati income taxes.**
- 14) **Amendment:** This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto or their representatives.
- 15) **Entirety:** This Agreement and the Exhibits attached hereto contain the entire Agreement between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.
- 16) **Cooperative Purchasing:** The City of Cincinnati and other governmental entities may purchase the commodities indicated contract. Each Entity will issue its own purchasing document based on the contract's pricing.

ARTICLES OF AGREEMENT

This contract made and entered into by and between the party of the first part and the party of the second part.

WITNESSETH. That the said party of the second part has agreed and by these presents does agree, with the party of the said first part, for the consideration hereinafter named, to furnish all the materials, supplies, equipment, or to do the work necessary to complete in good, substantial and workman-like manner, ready for use in strict accordance with the proposal, specifications, plans, profiles or drawings of the items hereinafter set forth and in accordance with the foregoing terms and general conditions, all of which are made a part hereof.

ADDITIONAL INFORMATION AND AUTHORIZED COMMUNICATION

Questions or requests for additional information regarding this solicitation shall be directed in writing to the assigned City of Cincinnati employee, Kirby Sommers, via email at Kirby.Sommers@cincinnati-oh.gov.

TAXPAYER IN GOOD STANDING

Vendors awarded a contract will be required to submit a letter from the City's Income Tax Division verifying good standing.

BEGINNING OF WORK

The contractor shall start work within five (5) calendar days from receipt of written notice to begin work, by registered or certified mail, from the City Agency for whom the work is to be performed.

No work of any kind shall be done by contractor until so notified.

COMPLETION OF WORK

The contractor shall secure delivery of all equipment and materials required and shall complete on-site work within sixty (60) calendar days from receipt of notice to begin work.

LIQUIDATED DAMAGES

The amount of liquidated damages to be paid by the contractor for each and every working day that he is in default is \$0.00.

CHANGE ORDERS

If, by mutual agreement, both parties desire to modify the scope, schedule, budget or unit pricing of this Contract and the modification is not approved as part of a construction Allowance for unforeseen site conditions, a Construction Change Order must be fully executed prior to any of the modifications taking effect or work commencing. In no event shall the City pay any costs above the agreed-upon and prior certified amounts, and Contractor shall not proceed with any work which has not been authorized, in the absence of such Change Order.

TERMINATION OF CONTRACT

The City may terminate this contract at any time for any reason upon thirty (30) days written notice to Contractor.

If, through any cause, the contractor shall fail to fulfill in a timely and proper manner the Contractor's obligations under this contract or if the Contractor violates any of the terms and conditions, covenants or agreements of the Contract, if no attempt is made to cure the failure within a period of ten (10) days or a longer period specified in writing, the City of Cincinnati shall have the right to terminate this Contract by giving written notice to the Contractor specifying the effective date of the termination, at least five (5) days before such effective date. Notwithstanding the above, the Contractor shall not be relieved of liability to the City of Cincinnati for damages sustained by the City of Cincinnati by virtue of any breach of this Contract by the Contractor, and the City of Cincinnati may withhold any payments to the Contractor for the purpose of set-off until

such time as the exact amount of damages due the City of Cincinnati from the Contractor is determined. Exceptions may be made with respect to defaults of subcontractors.

SEND INVOICE TO

Invoices must be submitted on the contractor's standard invoice and mailed to:

Cinti Recreation Commission
Two Centennial Plaza
805 Central Ave Suite 800
Cincinnati, OH 45202

The item(s) shall be invoiced showing quantity and sufficient identification data (i.e. part number, catalog number, etc.) to facilitate audit of invoices by the City of Cincinnati.

PROJECT CLASSIFICATION

The Heavy, Highway classification shall be used by all contractors on this project.

WAGE DETERMINATION

State of Ohio Prevailing wage rates shall apply for all Contractors on this project in accordance with determination number 2024-131. The applicable rates of wages are available on the Internet at:

<http://www.cincinnati-oh.gov/inclusion/bid-contract-requirements/city-state-funded-construction-projects/>.

WAGE ENFORCEMENT

This contract is or may be subject to the Wage Enforcement provisions of the Cincinnati Municipal Code. These provisions require that any person who has an agreement with the city or with a contractor or subcontractor of that person shall report all complaints or adverse determinations of Wage Theft and Payroll Fraud (as defined in Chapter 326 of the Cincinnati Municipal Code) against the person, contractor or subcontractors to the Department of Economic Inclusion within 30 days of notification of the complaint or adverse determination.

Under the Wage Enforcement provisions, the City shall have the authority, under appropriate circumstances, to terminate this Agreement or reduce the incentives or subsidies to be provided under this Agreement and to seek other remedies.

SUBCONTRACTORS

In the event the contractor employs a subcontractor without first securing the required approval of the subcontractor by the City, on a Form 2004, the City shall have the right to stop payment to the Contractor or withhold any monies due the Contractor until the subcontractor is approved by the City.

The City maintains a list of Vendors Debarred from Contracting or Subcontracting with the City may be accessed at: <http://www.cincinnati-oh.gov/purchasing> or may be furnished in other form upon request. The City will not contract with any firm or person on the list. It is Contractor's responsibility to verify that each subcontractor it proposes to use is an eligible firm or person. The

City will not approve a subcontractor whose name appears on the list.

The City shall neither accept nor be liable for any increase in costs, or other expenses, delay, loss, or subsequent ineligibility to contract with the City, incurred by a contractor as a result of the City rejecting any proposed person, firm, partner, principal, affiliate, subcontractor or supplier that is debarred or suspended after the submission of a bid, proposal, or other communication leading to a contract, but before the approval or award of the contract.

The City shall not unreasonably withhold approval of a subcontractor.

Form 2004 Subcontractor Approval Request Form is available in the Department of Economic Inclusion, Two Centennial Plaza, 805 Central Ave., Suite 610, Cincinnati, Ohio 45202 (telephone no. 513/352-3144).

SPECIFICATIONS

All work shall be performed, and materials furnished in accordance with the following specifications:

- (1) **City of Cincinnati Standard Specification No. 4-1-21, May 28, 2021.**
- (2) **Letter from Reds Community Fund, dated 4/10/2024, attached.**
- (3) **Direct Award waiver request dated 4/24/2024 and approved by the Chief Procurement Officer on 4/30/2024, attached.**
- (4) **Proposal from Playground Equipment Services, LLC, dated 5/24/2024, attached.**

STATEMENT OF NON-COLLUSION

In submitting this bid, the bidder affirms that the bid is genuine and not collusive or a sham; that said bidder is not financially interested in, or otherwise affiliated in a business way with any other bidder on the same contract; that said bidder has not colluded, conspired, connived, or agreed, directly or indirectly, with any bidder or person, to put in a sham bid, or that such other person shall refrain from bidding, and has not in any manner, directly or indirectly sought by agreement or collusion, or communication or conference, with any person, to fix the bid price of this or any other bid, or to fix any overhead, profit or cost element of said bid price, or of that of any other bidder, or to secure any advantage against the City of Cincinnati or any person or persons interested in the proposed contract; and that all statements contained in said proposal or bid are true; and further, that such bidder has not, directly or indirectly submitted this bid, or the contents thereof, or divulged information or data relative thereto to any association or to any member or agent thereof.

EQUAL EMPLOYMENT OPPORTUNITY PROGRAM REGULATIONS

The Contractor shall be subject to the provisions of the City of Cincinnati Municipal Code Chapter 325, regarding Equal Employment Opportunity (EEO).

AMERICANS WITH DISABILITIES ACT

The City of Cincinnati is committed to supporting the Americans with Disabilities Act. Please contact the City's Office of Aging and Accessibility if you require any special accommodations.

SMALL BUSINESS ENTERPRISE (SBE) AND MINORITY & WOMEN BUSINESS ENTERPRISE (M/WBE) PROGRAMS

Requirements of the City of Cincinnati Municipal Code Chapter 323 (SBE Program) and 324 (M/WBE Program), and amendments thereto are applicable. The contract with the City shall be subject to, and the contractor shall comply with, the provisions of Cincinnati Municipal Code Chapter 323 and 324. Section 323-99 and 324-99 shall be incorporated by reference into the contract with the City. Details concerning this program can be obtained from the Department of Economic Inclusion, Two Centennial Plaza, 805 Central Avenue, Suite 610, Cincinnati, Ohio 45202 or via <http://www.cincinnati-oh.gov/inclusion/>.

The Contractor shall utilize best efforts to recruit and maximize the participation of all qualified segments of the business community in subcontracting work, which includes the utilization of Small Business Enterprises (“SBEs”). This includes the use of practices such as assuring the inclusion of qualified Small Business Enterprises in bid solicitations and dividing large contracts into smaller contracts when economically feasible.

OFFEROR’S COVENANT OF NON-DISCRIMINATION

Pursuant to the City of Cincinnati’s policy of non-discrimination, specifically in its purchasing and contracting practices, and as a condition of contract award, we covenant, represent and warrant that:

- We will not discriminate against small business enterprises on the basis of race, ethnicity, gender or disability in the process of contracting, subcontracting and purchasing;
- We will use good faith efforts to promote opportunities for small business enterprises to participate in and compete for opportunities to the extent of their availability and capacity;
- We will submit to ongoing monitoring by and submittal of reports to the City’s Department of Economic Inclusion;
- We will submit to investigations and/or audits by the Department of Economic Inclusion in connection with routine monitoring or as a result of specific allegations of discrimination.

VENDORS INELIGIBLE TO CONTRACT OR SUBCONTRACT WITH THE CITY

The City maintains a list of Vendors Debarred from Contracting or Subcontracting with the City may be accessed at: <http://www.cincinnati-oh.gov/purchasing> or may be furnished in other form upon request to the Chief Procurement Officer. The City will not contract with any person or firm on the list. It is each Bidder’s responsibility to verify that each subcontractor it proposes to use is an eligible firm or person. The City will not approve a subcontractor whose name appears on the list.

INSURANCE

See Form 160 attached.

RETENTION OF PERFORMANCE SURETY

The contractor will be required to provide performance surety in the amount of 100% of the

contract value.

A performance bond surety shall be kept fully in effect for one year following the acceptance of the final statement of costs by the City Manager.

If surety is a cashier's check or certified check, such surety will be refunded to contractor one year following the acceptance of the final statement of cost by the City Manager.

OHIO SALES TAX

Prices should not include Ohio Sales Tax on materials used on this project.

The City will furnish exemption certificates to the contractor upon request to the Office of Procurement.

CITY OF CINCINNATI

SPECIFICATION NO. 4-1-21 FSC 0100

DIVISION OF PURCHASING

APRIL 01, 1999

REVISED: MAY 28, 2021

STANDARD SPECIFICATION

TITLE: GENERAL CONDITIONS
PERTAINING TO BUILDING & STRUCTURE
CONSTRUCTION

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1. DEFINITIONS

Addenda: Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change, the Bidding Documents or the Contract Documents.

Architect or Architect/Engineer: The Architect, Engineer, or City Engineer. These terms are interchangeable and mean any of the above or their authorized representative.

Assigned Subcontractor: Successful bidder on a branch of work, whose obligations to the City are transferred to another Contractor. The bidder then becomes an Assigned Subcontractor to do work under the supervision of the other Contractor.

Bidding Documents: Notice to bidders or advertisements, if any, instructions to bidders, other bidding information and requirements, bidding forms and attachments, contract and bond forms, and the proposed Contract Documents, including any Addenda issued prior to receipt of Bids.

City Inspector: The City's representative authorized to make inspections of the Work and contract performance.

City or Owner: The City of Cincinnati acting through the designated representative of the City Manager, or independent board or commission and the head of the department or division under whose direction the work is being performed.

Contract Documents: These consist of the Bidding Requirements, Contract forms, Conditions of the Contract, the Construction Progress Schedule, the Specification, the Drawings, all Addenda, accepted Alternates and all Change Orders, Field Orders, and other documents incorporated in the Contract issued subsequent thereto.

Contractor: Organization identified as such in the Contract, means the Contractor, its Subcontractors, and its authorized representative.

Correction: Identical with Addenda.

Day: A calendar day.

Drawings: The Drawings which show the character and scope of the work to be performed and which have been prepared or approved by Architect/Engineer and are referred to in the Contract Documents.

1. DEFINITIONS (Continued)

Final Completion: Degree of completion at which time the Project as a whole is turned over for full use to the City and all work is completed in compliance with the Contract Documents.

Provide: To furnish and install; Furnish means to deliver F.O. B. Jobsite; Install means to unload, tally, hoist, distribute, and set in place.

Specifications: Those portions of the Contract Documents consisting of Written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Subcontractor: Person or organization that has a contract with the Contractor or another subcontractor to perform a portion of the work included in the Contract who prior to such performance received the written approval of the City.

Submittals: Shop Drawings, Product Data, Samples and similar required information which pertains to the workmanship, materials or equipment to be incorporated in any portion of the work.

Shop Drawings: Are drawings, diagrams, schedules and other data specially prepared for the work by the Contractor or a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the work.

Product Data: Are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the work.

Samples: Are physical examples which illustrate materials, equipment or workmanship and establish standards by which the work will be judged.

Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate, for those portions of the work for which submittals are required, the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

1. DEFINITIONS (Continued)

Substantial Completion: The date of the "Certificate of Substantial Completion" issued by the Architect/Engineer when construction is sufficiently complete in accordance with the Contract Documents, so that the City may occupy the work or designated portion thereof for the use for which it is intended.

Supplier: Source of material that is permanently incorporated in the work.

Work: The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work is the result of performing services, furnishing labor and providing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

2. FORMS

Form numbers refer to forms issued by the City of Cincinnati, Division of Purchasing. Copies are available upon request from the City department administering the Contract.

3. EXAMINATION OF SITE, DRAWINGS, SPECIFICATIONS, ETC.

By executing the bid/contract documents, the Bidder/Contractor represents that it has examined all drawings and data mentioned in the specifications, contract or proposal, and has visited the site, familiarized itself with the local conditions under which the work is to be performed, taken its own measurements, and correlated its observations with the requirements of the Bid/Contract Documents.

No plea of ignorance of conditions that exist or of conditions or difficulties that maybe encountered in the execution of the work under this Contract, as a result of a failure to make the necessary examination and investigations, will be accepted as an excuse for any failure or omission on the part of the Contractor to fulfill in every detail all of the requirements of the Contract Documents.

4. U L APPROVAL

Where plans or specifications require the approval of Underwriters' Laboratories, Inc., the UL seal or listing of Underwriters' Laboratories, Inc. will be accepted as evidence of conformance with this requirement.

4. U L APPROVAL (Continued)

In lieu of the label or listing, the Bidder/Contractor may submit independent proof satisfactory to the code enforcement agency that his assembled unit conforms to the published standards, including methods of test, of Underwriters' Laboratories, Inc.

5. USE OF AIA CONDITIONS

This specification includes certain conditions, which are found in The American Institute of Architects Document A201, "General Conditions of the Contract for Construction".

No other AIA conditions, than those included herein, shall be applicable.

6. CONTRACTUAL RELATIONSHIP

Nothing contained herein shall be deemed to create any contractual relationship between the Contractor or the Architect/Engineer nor shall anything contained herein be deemed to give any third party any claim or right of action against the City or the Architect /Engineer which does not otherwise exist without regard to the Contract.

7. CORRELATION & INTENT

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well known technical or trade meanings are used in the contract documents in accordance with such recognized meanings.

8. PAYMENT FOR PERMITS, CERTIFICATES

Unless otherwise specified, the City shall obtain the Building Permit at the City's own expense.

All other permits and certificates which may be required to complete the work shall be secured by each Contractor at each Contractor's own expense, unless otherwise specifically provided.

9. LAWS TO BE OBSERVED

The contractor at all times shall observe, and comply with all Federal, and State Laws, and Cincinnati Municipal Code, Ordinances, and regulations, in any manner affecting the work.

The contractor shall not proceed with or finish any work, even though same is called for in the plans and specifications, if it is contrary to any of the laws aforementioned, but shall notify the Architect/Engineer of such conflict.

If the Contractor performs any work knowing it to be contrary to such laws, ordinances, and regulations, and without such notice to the Architect/Engineer, it shall assume full responsibility therefore and shall bear all costs.

10. SAFETY - ACCIDENT PREVENTION

10.1 Adherence to all requirements

The Contractor agrees that the prevention of accidents to the general public, the City representatives and workmen engaged upon or in the vicinity of the work is the Contractor's responsibility, and that precautions shall be exercised at all times for the safety and protection of persons and property.

The Contractor agrees to comply with all Federal, State, Municipal and local laws, ordinances, ordinances, rules, regulations, codes, standards, orders, notices and requirements concerning safety as shall be applicable to the work, including among others, the Federal Occupational Safety and Health Act of 1970, as amended, and all standards, rules, regulations and orders which have been or shall be adopted or issued thereunder.

When so ordered, the Contractor shall stop any part of the work which the City deems unsafe until corrective measures satisfactory to the City have been taken, and the Contractor agrees that it shall not have nor make any claim for damages growing out of such stoppages.

Should the Contractor neglect to take such corrective measures, the City may do so at the cost and expense of the City and may deduct the cost thereof from any payments due or to become due to the contractor. Failure on the part of the City to stop unsafe practices shall in no way relieve the Contractor of the Contractor's responsibility therefore.

10.2 Occupational Safety and Health Act (OSHA)

The Contractor warrants and agrees that the work will be performed in compliance with all OSHA and EPA requirements and further agrees to indemnify and hold harmless the City and the Architect from any and all claims, fines, levies, suits, actions, and judgments of every nature and description brought against the Contractor which arise out of the failure of the Contractor, its employees, and agents to comply with OSHA and EPA safety requirements.

10.3 Safety Devices

The Contractor shall keep safety devices in good working order and shall fully protect the workmen, the general public, and representatives of the City and Architect/Engineer.

10.4 Site Plan

Contractor shall file with the Architect/Engineer prior to the Pre-Construction meeting a site-specific Safety Plan, which at a minimum shall:

1. Designate and name key personnel and alternates responsible for site safety along with means of contacting these personnel at all times.
2. Identify hazard(s) associated with each project operation (please use Description of Scope of Work in bid document as referenced).
3. Confirm that all personnel working on the project are adequately trained to perform their job responsibilities and to handle the specified hazardous situations associated with the project.
4. Describe the protective clothing and equipment to be worn by personnel during various site operations.
5. Reference procedure(s) or process(es) that will be employed to abate or minimize hazards that have been identified. Example: Eye Injury - PPE (goggles, face shield, etc.); Fall - Fall Protection (tie off, guard rail, etc.); Falling Objects - hard hat; Electric Shock - PPE, lock out/tag).

10.4 Site Plan (Continued)

6. Describe any site-specific medical surveillance requirements (hazardous waste or material sites only).
7. Describe the program for periodic air monitoring, personnel monitoring, and environmental sampling, if needed (hazardous waste or material sites only).
8. Describe the actions to be taken to mitigate existing hazards (e.g., containment of contaminated material) to render the work environment less hazardous.
9. Define site control measures and include a site map.
10. Establish decontamination procedures for personnel and equipment (hazardous waste or material sites only).
11. Set forth the site's Standard Operating Procedures (SOPs). SOPs are those activities that can be standardized and where a checklist can be used. The procedures should be:

Prepared in advance.

Based on the best available information, operational principles, and technical guidance.

Field-tested by qualified health and safety professionals and revised as appropriate.

Appropriate to the types of risk at that site.

Formulated to be easy to understand and practice.

Provided in writing to all site personnel who should be briefed on their use.

Included in training programs for site personnel.

Set forth a Contingency Plan for safe and effective response to emergencies.

In addition, any safety information or documentation, which is required under law to be filed with any state or federal agency, shall also be supplied to the Architect. A copy of the Site Safety Plan shall, at all times, be present at the work site.

11. ARCHITECT/ENGINEER AND CITY INSPECTORS

The Architect/Engineer shall review shop drawings, mockups, material samples, and other submissions prepared and submitted by the Contractors, manufacturers or suppliers on the Project and request revisions or approve submissions in accordance with the Contract Documents.

The City or its authorized representatives shall at all times have unrestricted access to all parts of the Work and other places at and in which the preparation of the materials and the construction of the different parts of the Work to be done under the Contract are carried on and conducted, and shall be given by the Contractor all facilities and assistance required to carry out their work.

No charge shall be made for unavoidable delay of the Work due to inspection and testing and while lines and levels are being given.

The Architect/Engineer or City Inspector shall have no authority to permit any deviation from the plans and specifications except on the written order of the City, and the Contractor will be liable for any deviation except on such written order.

The Architect/Engineer will make periodic visits to the site to familiarize themselves generally with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Contract Documents.

The operation of the Contractor shall not require the Architect/Engineer to make exhaustive or continuous onsite inspections to check the quality or quantity of the Work.

12. BEFORE STARTING WORK

Before any work is started the contractor shall notify the City of the methods and procedures intended to be used and no work shall be started until these methods are to the complete satisfaction of the City and a written notice to proceed has been issued.

This review is for general compliance with the Contract Documents.

Contractor shall notify the City Inspector no later than 48 hours prior to the time the Contractor intends to start or resume work on the job, so the City Inspector may be present.

13. SUPERVISION AND CONSTRUCTION PROCEDURES

The Contractor shall supervise and direct the work, using skill and attention.

The Contractor shall determine the construction means, methods, techniques, sequences and procedures.

The Contractor shall be responsible for coordinating all portions of the Work under the Contract.

14. CONTRACTOR'S SUPERINTENDENT

The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the work site during the progress of the Work.

The Contractor's superintendent shall not be changed without the consent of the City.

The Contractor's superintendent shall represent the Contractor and communications with the Superintendent shall be as binding as if given to the Contractor.

15. LOCAL HEADQUARTER

Upon commencement of the Work the Contractor must establish and maintain a local area headquarters where the Contractor can be readily reached by local telephone service and by the United States Postal Service.

16. WORKERS

16.1 Skilled Workers

None but workers experienced and skilled in the particular work assigned to them shall be employed on the different parts of the work and no workmanship that is not first class in every respect will be accepted by the City.

16.2 Incompetent Workers

Any person employed by the Contractor or by any Subcontractor who, in the opinion of the Architect/Engineer does not perform his or her work in a proper and skillful manner or is intemperate or disorderly shall, at the written order of the Architect/Engineer, be removed forthwith by the Contractor or Subcontractor employing such person, and shall not be employed again in any portion of the Work without the approval of the person who made the order.

16.2 Incompetent Workers (Continued)

Should the Contractor fail to remove such person or persons as required above, or fail to furnish suitable and sufficient personnel for the proper prosecution of the work, the Architect/Engineer may withhold all payments, which are or may become due, or may suspend the work by written notice until the Contractor complies with such orders.

16.3 Avoidance of Disruptive Situations

The Contractor shall not employ persons, means, materials or equipment which may cause strikes, work stoppages or any disturbances by workers employed by the Contractor as a result of the Contractor violating any labor agreement to which it is legally bound. The Contractor agrees that all disputes as to jurisdiction of trades shall be adjusted in accordance with any plan for the settlement of jurisdictional disputes to which it is legally bound which may be in effect either nationally or in the locality in which the work is being done and that it shall be bound and abide by all such adjustments and settlements of jurisdictional disputes, provided that the provisions of this paragraph shall not be in violation of or in conflict with any provisions of law applicable to the settlement of such disputes.

Should the Contractor fail to carry out or comply with any of the foregoing provisions, the City shall have the right, in addition to any other rights and remedies provided by this contract or the other contract documents or by law, after three (3) days written notice mailed or delivered to the last known address of the contractor, to terminate this contract or any part thereof or the employment of the contractor for all or any portion of the work, and, for the purpose of completing the work, to enter upon the premises and take possession, in the same manner, to the same extent and upon the same terms and conditions as set forth in Section 37, Failure to Prosecute work.

17. SUBCONTRACTORS

The Contractor, as soon as practicable after the award of a Contract, shall complete Subcontractor Approval Form 208 and submit to the City for acceptance for all Subcontractors proposed for any portions of the work.

The City shall promptly notify the contractor in writing if the City or the Architect/Engineer, after due investigation to and does not approve any subcontractor. The contractor shall not enter into a subcontract until after the City has approved the subcontractors by use of Form Purch 208.

17. SUBCONTRACTORS (Continued)

The contractor's request to the City for the approval of any proposed subcontractor shall be accompanied by a written statement containing such information as the City may require, including but not limited to, experience, ability, responsibility, references, compliance with law, and any other criteria pertinent to the work of the proposed subcontractor and the scope of the subcontract.

The contractor shall be fully responsible to the City for the acts and omissions of all subcontractors, and of persons either directly or indirectly employed by subcontractors, as the contractor is for the acts and omissions of persons directly employed the contractor.

The contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to require compliance by each subcontractor with the applicable provisions of the City.

Nothing contained in the contract shall create any contractual relations between any subcontractor and the Architect/Engineer or the City.

Rental of equipment either with or without an operator in connection with the performance of the work under this contract shall not be considered subcontracting if the contractor maintains full supervision and control over its operation and the operator's wages.

Whether the contract is sublet or whether hired equipment is engaged under this contract, it shall be the contractor's responsibility to fulfill all the terms of the contract and provide satisfactory evidence that the prevailing wage rates are being paid to all personnel engaged on the site, whether his own, those of a subcontractor, or anyone directly or indirectly employed by either the contractor or subcontractor.

Contractor shall provide five (5) days notice to the City of its intent to rent equipment, providing information regarding said equipment and its operators as the City may require.

18. ASSIGNMENTS

The contractor shall not assign the work or any part thereof, without the previous written consent of the City, and will not assign, by power of attorney or otherwise, any of the monies payable under this contract, unless by and with the consent of the City.

18. ASSIGNMENTS (Continued)

The Contractor further agrees that no right under this contract, nor to any monies due or to become due hereunder, shall be asserted in any manner against the City or any person or persons acting under it, by reason of any so called such assignment shall have been authorized by written consent of the City.

Assignments shall be executed in triplicate on Form No. 29.

19. EXECUTION OF WORK

The work shall be executed strictly according to the drawings and specifications referred to in the Bid and contract documents and such explanations and supplementary drawings, Architect/Engineer approved shop drawings, and physical samples as may become necessary.

In case of ambiguities or inconsistencies within the contract documents, specific details and descriptions will govern over general details and description.

To assure the proper execution of the work, the contractor shall verify all dimensions as shown on drawings and take all measurements at the work site and be responsible for their use in preparing shop drawings and the assembly of material.

Should any discrepancy appear or any misunderstanding arise as to the import of anything contained in drawings or specifications, the explanation of the City shall be final and binding on the contract.

Any correction, of an error or omission in Drawings or specifications, may be made by the City when such correction is necessary for the proper fulfillment of their intention.

Submittals

The contractor shall review, approve, and submit to the Architect/Engineer shop drawings, product data, samples, and similar submittals required by the contract documents in such sequence as to cause no delay in the work or in the activities of the City or of separate contractors. Submittals made by the contractor which are not required by the contract documents may be returned without action.

The Architect/Engineer will review or take other appropriate action on the contractor's submittals, but only for the purpose of checking for conformance with information given and the design concept expressed in the contract documents.

Submittals (Continued)

No portion of work requiring contractors or subcontractors to submit shop drawings or samples shall be commenced until the submission has been reviewed by the Architect/Engineer.

The contractor shall not be relieved of responsibility for deviations from requirements of the contract documents by the Architect's/Engineer's approval of shop drawings, product data, samples or similar submittals unless the contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of submittal and the Architect/Engineer has given written authorization to the specific deviation. The contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by the Architect's/Engineer's review thereof.

20. CONSTRUCTION NOTICE

Interpretation of contract documents or minor changes in the work not involving changes in contract price or contract time shall be issued by the City or Architect in writing, as construction notice and shall be executed by the contractor promptly.

21. WORK CHANGE NOTICE

21.1 Determining Costs

Any changes to the contract documents involving changes in contract price and/or contract time shall be processed as follows:

The contractor shall submit a written proposal, with a complete itemized breakdown, detailed to show quantities and unit costs of material, labor hours and labor costs per hour, to the City's acceptance using one of the City's acceptance using one of the following methods:

1. By adding or deducting an amount utilizing unit prices as stated previously in the contract, or subsequently to be agreed upon by the City and the contractor.

21.1 Determining Costs (Continued)

2. By adding: (1) The actual net cost to the contractor of labor in accordance with the established rates, including required union benefits, premiums, the amounts the contractor is required to pay for workers compensation, liability insurance and payroll taxes on such labor; (2) The actual cost to the contractor of materials and equipment and such other direct costs as determined by the City (THE CITY'S DETERMINATION OF WHAT CONSTITUTES A DIRECT COST SHALL BE FINAL.), less all savings, discounts, rebates and credits; (3) An allowance of 15% for overhead and profit on items (1) and (2) above. The contractor will be allowed 5 percent mark-up or the lesser percent specified as an assignment fee amount in the contract only, on all subcontractor's quotations. In such case, the contractor shall keep and present, in such form as the City may prescribe, and itemized accounting together with the appropriate supporting data.

The amount of credit to be allowed by the contractor to the City for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease. When both additions and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of net increase, if any.

The definition of net actual cost, the 15 percent for overhead and profit and the allowance of 5 percent mark-up on the lesser percent specified as an assignment fee amount in the contract on all subcontractor's quotations shall apply to the contractor's subcontractor and their subcontractors.

Following award of the contract, the contractor, its subcontractors and their subcontractors, shall provide a detailed breakdown of labor rates, union benefits and premium percentages that the contractor, its subcontractors and their subcontractors are required to pay for worker's compensation, liability insurance, payroll taxes, and any other payroll expense, for each superintendent, foreman, journeyman and apprentice.

The labor rates, union benefits and premium percentages will be adjusted throughout the project for additional work providing proper documentation is presented to the City.

21.2 Disagreement over Value of Work

Should the City and contractor be unable to agree as to the value of the work to be added, deleted or revised, the contractor shall proceed with the work promptly under the written order of the City from which order the stated value of work shall be omitted. In the case of omitted work, the City shall have the right to withhold from payments due or to become due to the contractor an amount which in the City's opinion is equal to the total value of such work until such time as the value thereof is determined by agreement.

Should additional drawings and specifications be required for contract modifications, the Architect/Engineer shall provide the details and specifications to the contractor with a request for a proposal from the contractor. The contractor shall submit proposal as outlined above.

If the contractor's price proposal is accepted, the City shall prepare a written work change notice for the contractor's execution and for the Architect's/Engineer's and City's approval, modifying the contract documents.

If the contractor's price proposal is rejected, the City shall instruct the contractor, in writing, to resubmit a revised price proposal and also to proceed with the construction modifications. Negotiation on revision order price disagreements shall proceed simultaneously with the implementation of the construction modification. After agreement on a price proposal has been reached, the City shall issue a written work change notice modifying the contract documents.

21.3 Change Order

The written work change notice order shall be signed by the contractor, Architect/Engineer and City, and submitted to the Administrating Agency.

A change order will be issued by the City Department or Division and submitted to Division of Purchasing.

22. PROTECTION OF WORK

The contractor shall adequately protect the work, adjacent property, the work of other contractors, and the public, and shall be responsible for any damage or injury due to the contractor's act or neglect.

22. PROTECTION OF WORK (Continued)

The contractor shall be entirely responsible for all work, apparatus, equipment and appurtenances provided by the contractor in connection with this work, until date of final acceptance, and special care shall be taken to protect against vandalism, theft, and accidental damage, all parts hereof in such manner as may be necessary or as directed.

Any damage done to the contractor's work or the work of others shall be corrected by the contractor at the contractor's own expense.

23. TRANSPORTATION AND PROTECTION OF EQUIPMENT AND MATERIALS

The contractor shall furnish all transportation for equipment and materials, and shall be fully responsible for its safe transport and storage at the site, including taking whatever measures are necessary for the protection and security of equipment and materials.

The contractor, in making or ordering shipments, shall not consign or have consigned materials, equipment or any other items in the name of the Architect/Engineer or of the City. Neither the City nor the Architect/Engineer are under any obligation to make payment for charges on shipments made by or to the contractor.

24. NEW MATERIALS

The contractor warrants to the City and the Architect/Engineer that all materials and equipment furnished under the contract will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects and in conformance with the contract documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the City or Architect/Engineer, the contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

25. CONTRACTOR'S ACCEPTANCE OF OTHER'S WORK

If any part of the contractor's work depends upon the work of any other separate contractor, the contractor shall inspect and promptly report, in writing, to the Architect/Engineer any apparent discrepancies or defects in such work that render it unsuitable for the contractor to proceed.

25. CONTRACTOR'S ACCEPTANCE OF OTHER'S WORK (Continued)

Failure of the contractor to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper to receive its work, except as to defects which may develop in the other separate contractor's work after the execution of the contractor's work.

26. CUTTING, PATCHING

The contractor shall be responsible for cutting, fitting or patching required to complete the work or to make its parts fit together properly.

The contractor shall not damage or endanger a portion of the work or fully or partially completed construction of the City or separate contractors by cutting, patching, excavation or otherwise altering such construction. The contractor shall not cut or otherwise alter such construction by the City or a separate contractor except with written consent of the City and of such separate contractor; such consent shall not be unreasonably withheld.

The contractor shall not unreasonably withhold from the City or a separate contractor the contractor's consent to cutting or otherwise altering the work. Any costs caused by defective or ill-timed work shall be borne by the party responsible therefore.

27. PRIORITY OF WORK

Any function of the City relative to the health, safety, or welfare of the public shall take priority, and the contractor shall schedule the work accordingly.

28. SANITARY REGULATIONS

Adequate sanitary measures as conditions may require, shall be taken by the contractor.

Necessary sanitary conveniences for the use of employees on the work, properly secluded from public observation, shall be provided and maintained by the contractor in such manner and at such locations as shall be approved, by the City and the use of such sanitation facilities shall be enforced.

29. CLEANING OF GROUNDS AND PREMISES

Daily during the course of the work each contractor shall remove all refuse created by the contractor.

CLEANING OF GROUNDS AND PREMISES (Continued)

At all times keep the premises free from accumulation of waste material caused by its employees, and at completion of the work remove all rubbish from the site and leave the area broom clean.

All clean up to be approved by the City before acceptance. If the contractor fails to clean up, the City, after due notice, may do so and the cost thereof shall be charged to the contractor.

30. CONTRACTOR RESPONSIBLE FOR COMPLETENESS OF WORK

The contractor is responsible for completing the work as described in the contract documents. This includes any and all incidentals, whether identified or not, that are considered typical and pertinent to the completion of the work and its components.

The City is not responsible for guiding the contractor through the work. It is the responsibility of the contractor to ensure that the requirements of the contract documents are met, and that the work is done in accordance with proper practice, efficiently, professionally, and completely. The City shall not release the contractor from this responsibility.

Under no circumstances shall the failure of the City to note or detect any deficiency during the course of the work be considered a waiver by the City of any contract term or condition.

31. REJECTED MATERIAL AND DEFECTIVE WORK

The City inspectors shall have authority to reject any work, materials, and parts thereof which do not conform to the contract documents.

All rejected materials shall be removed immediately from the vicinity of the work.

All defective work shall be promptly replaced and made satisfactory to the City and the Architect/Engineer by the contractor at the contractor's expense.

At the request of the City inspectors the contractor shall remove any portion of the work done, as the City inspectors may, from time to time, think necessary for the discovery of improper materials or workmanship, and the contractor shall restore such work at its own expense in case it be found defective.

31. REJECTED MATERIAL AND DEFECTIVE WORK (Continued)

The City will pay for restored work if no evidence of improper materials or workmanship is found.

32. TESTING

32.1 Specimens

Specimens required for the purpose of testing the quality of the materials and samples for compliance with the contract documents to be used in the work shall be furnished by the contractor, free of charge. The quantity, number, size and shape of these specimens shall be determined by the City.

The contractor shall also furnish all necessary information required concerning the nature and source of any material it intends to use or is using.

32.2 Tests

Adequate tests and trials shall be made of all materials and workmanship which are part of this contract as well as of the finished products.

These tests and trials shall be conducted as specified herein, or in conformity with the best modern approved methods for the particular type of test or trials.

All tests and trials shall be made in the presence of a City inspector unless the presence of the inspector is waived by the City.

When the presence of the City inspector is so waived, sworn statements, in such number as the City may require, of the tests or trials, shall be furnished by the contractor free of charge.

All costs of tests and trials, unless specifically stated otherwise herein, shall be paid by the City.

33. SCOPE OF PAYMENTS

The prices stated in the contract shall include all risks of delay, damage and destruction from all causes whatsoever, all labor, material and transportation, and all other work, equipment, and expenses of whatever nature necessary or incidental to the performance, completion and maintenance of the work herein specified, in perfect condition during the progress of and until completion and final acceptance.

33.1 Schedule of Values

Before commencing the work, the contractor shall submit to the Architect/Engineer a schedule of values allocated to various portions of the work, prepared in such form and supported by such data to substantiate its accuracy as the Architect/Engineer may require. This schedule, unless objected to by the Architect/Engineer, shall be used as a basis for reviewing the contractor's application for payment.

33.2 Partial Payments

As the work progresses the City will make monthly partial payments. Payments will be based on contractor's estimates of work done, including labor and materials incorporated in the work since last partial payment, if any, if approved by the City.

The City will pay not less than 92 percent of the estimates until 50 percent of the work is completed, thereafter 100 percent of the estimates submitted by the contractor and approved by the City will be paid.

At any time estimates may be withheld or reduced if, in the opinion of the City, the work is not proceeding in accordance with the provisions of the contract, or pending settlement of liens or claims filed against the contractor as described in section 41.2.

Form No. 97 S Affidavit of General or Mechanical Branch contractor, must be submitted with every request for partial payment. Supply of forms is available from the contract administering agency.

33.3 Stored Materials and Equipment

Unless otherwise provided in the contract documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the work. If approved in advance by the City payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the contractor with procedures satisfactory to the City to establish the title to such materials and equipment or otherwise protect the City interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

Payment for stored material shall not exceed the actual cost thereof as documented by the supplier's invoice.

33.4 Final Completion and Final Payment

Upon receipt of written notice that the work is ready for final inspection and acceptance and upon receipt of a final application for payment, the Architect/Engineer will promptly make such inspection and, when the Architect/Engineer finds the work acceptable under the contract documents and the contract fully performed, the Architect/Engineer will issue a certification stating that to the best of the Architect's/Engineer's knowledge, information and belief, and on the basis of the Architect's/Engineer's observations and inspections, the work has been completed in accordance with terms and conditions of the contract documents and that the entire balance found to be due the contractor and noted in such application for payment is due and payable.

If any items were erroneously estimated too large in any partial payment estimate, such error shall be corrected in the statement of total cost, and the contractor shall have no right to any such excess and shall not be entitled to any damage on account of such correction in the statement of total cost.

Before final payment will be released (1) the contractor shall have furnished evidence satisfactory to the City that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes or other items performed, furnished or incurred for or in connection with the work, and (2) the contractor shall have executed and delivered in a form satisfactory to the City a general release running to and in favor of the City. Should there prove to be any such claim, obligation or lien after final payment is made, the contractor shall refund to the City all monies that the City shall pay in satisfying, discharging or defending against such claim, obligation or lien or any action brought or judgement recovered thereon and all costs and expenses, including legal fees and disbursements, incurred in connection therewith.

The City shall have the right to withhold from payments if any of the following occur: (1) evidence of nonpayment for any labor, services, materials, equipment, taxes, fuel, other necessary items, or obligations incurred in connection with the work, (2) any claim or lien filed as a result of nonpayment for any of the fore mentioned, (3) any claim or lien for which the City might become liable and which is chargeable to the contractor, (4) if the contractor, any subcontractor or any person under it causes damage to the work or any other work on the project, or (5) if the contractor fails to perform or is otherwise in default under any of the terms or provisions of this contract.

33.4 Final Completion and Final Payment (Continued)

The City shall have the right to withhold from any payment then due or thereafter to become due an amount which it deems sufficient to (1) satisfy, discharge, and/or defend against any claim, lien, action which may be brought against it, or judgement which may be brought against it, or judgment which may be recovered thereon (2) make good any such nonpayment, damage, failure or default, and (3) compensate the City for and indemnify it against any and all losses, liability, damages, costs, and expenses. This includes legal fees and disbursements which may be sustained or incurred by either the City or the contractor. The City shall have the right to apply and charge against the contractor so much of the amount retained as may be required for the forgoing purposes.

If the amount withheld is insufficient therefore, the contractor shall be liable for the difference and pay the same to the City.

No payment (final or otherwise) made under or in connection with this contract shall be conclusive evidence of the performance of the work or of this contract, in whole or in part, and no such payment shall be construed to be an acceptance of defective, faulty or improper work or materials nor shall it release the contractor from any of its obligations under this contract; nor shall entrance and use by the City constitute acceptance of the work or any part thereof.

33.5 Removal of Signs, Providing Submittals

Prior to the date of final payment to the contractor, all of the contractor's signs of any kind shall be removed from the premises, and all submittals required by the contract, including warranties and equipment lists, shall have been submitted.

34. SUBCONTRACTORS PAYMENTS

Prior to payment of any partial payments to a contractor under section 33.2 PARTIAL PAYMENTS, the City requires the contractor to file a partial (progress) payment affidavit. Such affidavits shall be filed with the City's contract administering agency, and available for the subcontractor's review.

It is the subcontractor's obligation to collect payments due it from the party with whom it contracted, namely the contractor.

34. SUBCONTRACTORS PAYMENTS (Continued)

Subcontractors have certain rights under Ohio law which may expire if not promptly and correctly pursued.

If subcontractor has any doubts or questions, consult an attorney.

35. AFFIDAVITS

35.1 Required During Progress on Work

Upon request by the City at any time during contract period the contractor and/or its subcontractors may be required to submit a Form 104 or Form 104F and Form 66 certifying that wages have been paid in accordance with the prevailing rate of wages provisions set forth in the contract.

Each month during the contract period the contractor shall submit a form PURCH 257, monthly employment utilization report.

Form 97S must be submitted with every request for a partial payment.

35.2 Upon Completion of Work

Upon completion of the work and prior to the payment of the final application for payment, the contractor and its subcontractors shall execute and submit the following affidavits:

Form 66: Certifying that payments have been made for all labor and materials.

Form 104 or Form 104F: Certifying that wages have been paid in accordance with the prevailing wages provisions set forth in the contract.

If requested by the City, Affidavit Form 104 or 104F must be supported by a certified copy of the detailed payroll record for the questioned period or periods. If requested by the City Form 66 must be supported by affidavits from all subcontractors and suppliers.

The City may withhold payment of any estimate if (1) either of the Affidavits and/or the certified payroll records have not been submitted, or (2) if the prevailing rate of wages have not been met.

36. CLAIMS AND DISPUTES

All claims for compensation and disputes of whatever kind or nature arising under this contract or its interpretation, whether involving law or fact or both, shall be presented by the contractor in writing to the City within seven (7) days of commencement of the claim or dispute.

Such notice need not detail the amount of any claim for compensation but shall state the facts surrounding the claim or dispute in sufficient detail to identify the claim or dispute, together with its character and scope. In the meantime the contractor shall proceed with the work.

Any claim or dispute shall be deemed to have been waived, except that if the claim or dispute is of a continuing character and notice of claim or dispute is not given within seven (7) days of its commencement, and claim or dispute will be considered only for a period commencing seven (7) days prior to the receipt by the City of notice thereof.

On or before the last day of the month next succeeding that in which any such damage is claimed to have been sustained or compensation due, the contractor shall file an itemized statement of the details and amount of the alleged damage.

Upon request of the City, the contractor shall allow access to all books of account, receipts, vouchers, bills of lading, and other books or papers containing evidence relative to the amount of the claim or dispute. Unless such statement is filed as required, the contractor's claim for damages or compensation shall be deemed withdrawn, and the contractor shall not be entitled to payment on account of any such claim.

The City shall promptly consider and decide each claim or dispute. The decision of the City will be in writing and will be mailed or delivered to the contractor.

If the contractor does not agree with any decision of the City, it shall in no case allow the claim or dispute to delay the work but shall notify the City forthwith that the contractor is proceeding with the work under protest and the contractor may then except the matter in question from the final release.

37. FAILURE TO PROSECUTE WORK, DEFAULT, AND TERMINATION

Should the contractor at any time refuse or neglect to supply a sufficiency of skilled workmen or materials of the proper quality and quantity, or fail in any respect to prosecute the work with promptness and diligence, or cause by any act or omission the stoppage or delay of or interference with or damage to the work of the City or of any other contractors or subcontractors on the project, or fail in the performance of any of the terms and provisions of the contract or of the other contract documents, or should the Architect/Engineer determine that the work or any portion thereof is not being performed in accordance with the contract documents, or inexcusably delayed from proceeding with and completing the work according to this contract, or should there be filed by or against the contractor a petition in bankruptcy or for an arrangement or reorganization, or should the contractor become insolvent or be adjudicated a bankrupt or go into liquidation or dissolution, either voluntarily or involuntarily or under a court order, or make a general assignment for the benefit of creditors, or otherwise acknowledge insolvency; then in any of such events, each of which shall constitute a default hereunder on the contractor's part, the City shall have the right, in addition to any other rights and remedies provided by the contract or by law, after three (3) days written notice to the contractor mailed or delivered to the last known address of the latter, (a) suspend the work, (b) to perform and furnish through itself or through others any such labor or materials for the work and to deduct the cost thereof from any monies due or to become due to the contractor under this contract, and/or (c) to terminate the contract for all or any portion of the work, enter upon the premises and take possession, for the purpose of completing the work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, all of which the contractor hereby transfers, assigns and sets over to the City for such purpose, and to employ any person or persons to complete the work and provide all the labor, services, materials, equipment and other items required thereof.

In case of such termination of the contract, the contractor shall not be entitled to receive any further payment under this contract until the work shall be finally completed to the satisfaction of the City and the Architect/Engineer and shall have been accepted by the City at which time, if the unpaid balance of the amount to be paid under this contract shall exceed the cost and expense incurred by the City in completing the work, such excess shall be paid by the City. Such cost and expense shall include, not only the cost of completing the work to the satisfaction of the City and the Architect/Engineer and of performing and furnishing all labor, services, materials, equipment, and other items required therefore, but also all losses, damages, costs and expenses, including legal fees and disbursements sustained, incurred or suffered by reason of or resulting from the contractor's default.

In the event this contract, or any alteration or modification thereof, is thus terminated, the contractor shall not be entitled to claim or receive any compensation or damages for not being allowed to proceed.

38. RISKS FOR DELAYS

The contractor agrees to take the risk of any and all delays arising from the nature of the work or from any casualty, obstructions or difficulties which may be encountered during the work. Any claim for delay will be rejected unless the contractor presents clear and convincing evidence that the cause of the delay was within the control of the City. Compensation, if any, for delay shall not include any overhead, indirect costs or loss of anticipated profits.

39. LIQUIDATED DAMAGES

Time is of the essence in this contract. In the event the contractor shall fail in securing delivery of material and equipment and completion of on-site work within the period of time stipulated, after due allowance for any extension or extensions of time which may be granted under the following provisions of the section "EXTENSIONS OF TIME", the contractor shall pay the City as stipulated liquidated damages and not as a penalty, the sum specified in the bid and contract documents for each and every working day, Monday through Friday, that the contractor shall be in default.

The City shall have the right to deduct said liquidated damages from any monies in its hands otherwise due, or to become due, to said contractor or to sue for and recover compensation for damages for nonperformance of the contract in the time specified.

40. EXTENSION OF TIME - EXCUSABLE DELAYS

The right of the contractor to proceed shall not be terminated nor shall the contractor be charged with liquidated damages because of delays in the completion of the work due to any of the following:

Acts of the Federal Government, including controls or restrictions upon the use or obtaining of materials, equipment, tools or labor essential to completion of the work, by reason of war, national defense, or any other national emergency.

Acts of the City, including but not limited to changes in the method of performing the work or the scope of work covered by the contract, upon order of the City.

Causes not reasonably foreseeable by the parties to this contract at the time of the contract which are beyond the control of, and through no fault or negligence of, the contractor.

40. EXTENSION OF TIME - EXCUSABLE DELAYS (Continued)

This shall include, but not be restricted to, acts of God or the public enemy; freight embargoes, court actions; acts of another contractor in the performance of some other contract with the City; fires, floods, epidemics, quarantine, strikes, weather of unusual occurrence such as tornadoes; and weather of unusual severity for the season which directly affects or prohibits the work under the contract.

Any delay of any subcontractor occasioned by any of the causes specified in of this section.

Provided, however, that the contractor notifies the City in writing within three (3) days from the beginning of any such delay and details the causes of the delay.

Upon receipt of such notification the City shall ascertain the facts and the cause and extent of the delay. If, in the opinion of the City, the delay is properly excusable based on the facts and the terms of the contract, the City shall extend the time for completing the work for a period of time commensurate with the period of excusable delay.

It is further that the foregoing occurrences shall not result in any claim for damages or contract adjustment other than extension of time.

41. LIABILITY OF CONTRACTOR

41.1 Indemnity against Claims for Patents, Injuries

The contractor shall indemnify, defend protect and save the City harmless from all liabilities, judgments, costs, damages and expenses, which may in any way come against the City by reason of the use of any patented material, machinery, device, equipment or process furnished or used in the performance of the work under the contract, or by reason of the use of a patented design furnished and installed in the work by the contractor.

In the event any claim, suit, or action at law, or in equity, of any kind whatsoever is made or brought against the City, the City shall have the right to retain from the money due or to become due to the contractor an amount of money sufficient to protect itself against loss or judgement in the manner and upon the conditions as herein specified.

The contractor shall pay all damages to real or personal property, or for any injury sustained by any person growing out of any act or deed of itself, or its agents and employees, that is in the nature of a legal liability, the contractor shall defend protect and save the City harmless against all suits and actions of every type and description brought against the City for, or on account of,

41.1 Indemnity against Claims for Patents, Injuries (Continued)

any such injuries sustained by any person or persons, caused by the contractor, the contractor's agents and employees, in the execution of the work, or by or in consequence of any negligence in guarding the same, or by or on account of any omission or act of the contractor, the contractor's agents or employees, and so much of the money due it in accordance with the contract, as may be considered necessary by the City, will be retained by the City to protect the City against loss and judgment until such suit or claim for damage shall have been settled, and satisfactory evidence to that effect has been furnished to the City.

41.2 Indemnity against Claims for Labor and Material

It is agreed that the contractor shall indemnify, defend, protect and save the City harmless from any claims for labor done, materials furnished under this contract, or any alternations or modifications thereof, and shall furnish the City with satisfactory evidence, when called for, that all persons who have done work or have furnished materials under this contract, for which the City may become liable under any laws of the state of Ohio, have been fully paid or satisfactorily secured; and in case such evidence is not furnished, an amount necessary or sufficient within the discretion of the City to meet the claims of the persons aforesaid, shall be retained, in addition to any other moneys that are to be retained as herein specified, from the money due the contractor under the contract, until the aforesaid liabilities shall be fully discharged or satisfactorily secured.

41.3 Indemnity against all Suits

The contractor further agrees to relieve and hereby relieves and indemnifies and holds harmless the City from and against any and all liabilities, losses, judgments and claims of every nature and description by or on behalf of any person, firm, corporation, or other entity or governmental authority arising out of the performance of this contract by said contractor, the contractor's officers, servants, employees or agents.

Contractor shall relieve and hereby relieves and indemnifies and holds harmless the City, its officers, employees, agents and servants from and against any claim or liability arising out of, from or based on the violation of any law, statute, ordinance or regulation by the contractor, the contractor's officers, servants, employees, or agents.

42. INSURANCE

Contractor shall take out, and maintain during the life of the contract, insurance of the types and in the amounts specified on Form PURCH 160 included in the Bid/Contract Documents.

Submission of proof of carriage shall be as specified on Form 160.

43. SURETIES (UNSATISFACTORY OR INADEQUATE)

If the performance bond ceases to be adequate or satisfactory security for the City, the contractor shall, within five (5) days after notice of the City, furnish a new or additional bond, in form, and signed by such sureties as shall be satisfactory to the City.

No further payment shall be deemed due nor shall any further payment be made to the contractor unless and until such new or additional bond shall be furnished and approved.

The premium on such bond shall be paid by the contractor.

44. GUARANTEE

The contractor shall remove, replace and/or repair at the contractor's own expense and at the convenience of the City any faulty, defective or improper work, materials or equipment discovered within one (1) year from the date of Final Completion or for such longer period as may be provided in the Contract Documents. Any work repaired or replaced under the Guarantee will be guaranteed for the same duration specified and shall commence upon completion and acceptance of the repair or replacement.

The bond securing the contract shall cover this guarantee period.

The contractor shall bear the cost of making good all work of separate contractors destroyed or damaged by such correction.

The contractor shall be responsible for handling replacement and installation of malfunctioning equipment and materials during the entire period that the equipment or material is covered by this guarantee or the manufacturer's guarantee, whichever is longer.

45. SEVERABILITY

In the event any provision of this contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.



Mr. Daniel Betts
Director of Recreation
Cincinnati Recreation Commission
805 Central Avenue, Suite 800
Cincinnati, OH 45202

April 10, 2024

Dear Daniel,

Thank you for your commitment to the 2024 “Community Makeover” project in Bond Hill. We’re grateful to you and the entire CRC team for the partnership in this ambitious undertaking, both at the Community Center and the nearby park.

I want to clarify that the Reds Community Fund is prepared to make a contribution of up to \$150,000 in donated improvements towards the project. \$89,000 will be payable to CRC for a new synthetic infield and reconfigured diamond, in conjunction with an outstanding community partner and vendor.

This donation is contingent upon the selection of *Playground Equipment Services* as our synthetic field vendor. Following their extraordinary commitment towards the renovations at PNC Field at the LeBlond Rec Plex last summer, to the exceptional work that they’ve done on CRC diamonds throughout the community, it’s essential that we’re working with a known entity and one that is also committed to quality.


Please let me know if you have any questions regarding our commitment and the stipulation that we must include *Playground Equipment Services* as a part of our construction team. I can’t tell you how excited we are about the prospects of bringing a first-class field to an already upgraded recreation complex.

Thanks for your partnership as always, Daniel. Don’t hesitate to contact me if you have any questions or concerns at 513-765-7231 or cfrank@reds.com. Be sure to keep me posted on next steps as well.

Sincerely,

Charley Frank
Executive Director
Reds Community Fund

cc: Dan Jones - CRC

DATE: April 24, 2024
TO: Bobbi Hageman, Chief Procurement Officer
FROM: Daniel Betts, Director of Cincinnati Recreation Commission (CRC) 
CC: Tiffany Stewart, Jeanette Shoecraft
SUBJECT: Direct Award Request in accordance with CMC 321-87 Playground Equipment Services (Vendor #VS0000005204) – Donation on turf infield at Bond Hill Recreation Area.

The Cincinnati Recreation Commission (CRC) is requesting a waiver of competition in accordance with CMC 321-87 for the donation and in-kind for services from Playground Equipment Services as a Direct Award. The donation will include construction materials and labor associated with installation for a turf infield at Bond Hill Recreation Area.

The Reds are donating the money and part of the requirement for this donation is that the City uses Playground Equipment Services.

We are requesting this request be approved at a not to exceed amount of \$150,000.00.

Based on the above facts CRC believes it is in the best interest of the city to waive competition for this purchase.

If you have any questions, please contact Tiffany Stewart at 513.352.4034.



Chief Procurement Officer

4/30/24

Date



City Manager

Date



5/24/2024

Cincinnati Recreation Commission
Reds Community Fund

Quote: Bond Hill Field Renovation

- Install PES Field System turf infield on Bond Hill Rec Center

Labor and Material

TOTAL \$150,000

Prepared by:

A handwritten signature in black ink, appearing to read 'Lisa Helmers', is written over a horizontal line.

Lisa Helmers
Operations Manager
Playground

Accepted by:

A solid black horizontal line intended for a signature.

3460 Oakmeadow Lane
Cincinnati, Ohio 45239

Phone: 513-923-2333
Fax: 513-823-2444

playgroundequipmentservices.com

CONTRACTORS INSURANCE

1. ALL INSURANCE

1.1 General

It shall be the responsibility of the contractor to protect all life and property, and to protect himself, subcontractors, and the City from operations carried out in the performance of this contract.

The contractor shall secure Workers' Compensation insurance, General Liability, Automobile Liability, and other insurance as described below and on the reverse side hereof, as well as any other insurance which the City feels is necessary.

The insurance carrier shall be licensed to write insurance in the State of Ohio and the policies(s) shall be in full force as of the date of the contract and shall not be changed or canceled unless the insured and the City Purchasing Agent are notified in writing not less than thirty days prior to such change or cancellation. If any part of the contract is sublet, the contractor is responsible for the part sublet being adequately covered by insurance as specified herein.

1.2 Proof of Carriage

The policies or certificates of proof shall be delivered in triplicate to the City Purchasing Agent, 805 Central Avenue, Suite 234, Cincinnati, Ohio 45202-1972.

2. STATE OF OHIO WORKERS COMPENSATION INSURANCE

2.1 Coverage Required

State of Ohio Workers' Compensation insurance for all employees employed at the site of the project, and in case any work is sublet, the Contractor shall require the subcontractor similarly to provide State of Ohio Workers' Compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by the contractor.

2.2 Proof of Carriage

Certificate or Policy

3. GENERAL LIABILITY INSURANCE

3.1 Coverage Required

At least the types of Liability Insurance and in the amounts specified on the reverse of the form. This insurance shall protect the contractor and any subcontractor performing work covered by the contract and the City of Cincinnati from all claims for personal injury and property damage, which may arise from operations under this contract, whether such operations be by the contractor or by any subcontractor or by anyone directly or indirectly employed by either of them.

3.2 Proof of Carriage

(a) A policy or policies naming the contractor, subcontractors, and the City of Cincinnati as an additional insured or,

(b) A Certificate of Insurance executed by the insuring company or its authorized agent indicating that the contractor and subcontractors have the specified coverage and endorsed to include the City of Cincinnati as an additional insured. In addition, a copy of the additional insured endorsement to the actual policy is required.

4. OTHER INSURANCE

4.1 Coverage Required

At least the types and in the amounts specified on the reverse of this form. When hazards exist which are not normally covered by general liability insurance they shall be covered by a rider to the general liability policy or by a separate policy.

4.2.1 Demolition Coverage

When demolition work is performed, demolition coverage is required by a rider to the general liability policy or by a separate policy.

4.3 Proof of Carriage

Unless otherwise specified, proof shall be in the form stated in section 3.2.

5. FAILURE TO KEEP INSURANCE IN EFFECT

If insurance is permitted to lapse, payment for work done or commodity furnished during the period when the insurance is not in effect will be withheld by the City. Reinstatement of insurance effective to the date when it lapsed will be required before payment by the City will be made for the withheld amount.

BASIC INSURANCE COVERAGE

General Liability

Combined Single Limit-	BI & PD	\$1,000,000 Per Occurrence
	Personal Injury	\$1,000,000 Per Occurrence
	Aggregate	\$2,000,000

Automobile Liability

Combined Single Limit-	BI & PD	\$1,000,000 Per Occurrence
	Aggregate	\$1,000,000

Note: Coverage should include all owned vehicles, all non-owned vehicles, and all hired vehicles.

Builders Risk

"All Risk" Builders Risk policy which shall provide Fire and Extended Coverage, Vandalism and Malicious Mischief coverage for an amount equal to one hundred percent (100%) of the completed value of the project and shall be written in the Owner's and Contractors name.

NOTE: Performance surety in the amount of not less than \$150,000 is required.

PERFORMANCE SURETY AND SIGNATURE FORM

PERFORMANCE BOND (REQUIRED BY LAW)

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned, are held and firmly bound unto the City of Cincinnati, State of Ohio, in the sum of **One Hundred Fifty Thousand** Dollars to be paid on demand to said City of Cincinnati, its successors or assigns, for which payment well and truly to be made, we hereby bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

If the said Contractor shall honestly and faithfully commence, proceed with, perform and complete all and singular the terms and obligations of the contract and furnish the materials or perform the services in accordance with the terms of said contract and specifications as it now is and as may at any time hereafter be changed by any and all modifications or alterations; and shall hold said City harmless from any and all loss or damage in any manner resulting from any failure of the Contractor to comply with said contract and specifications, or resulting in any way from the performance thereof; and shall further protect and defend said City against and hold said City harmless from any and all claims of any kind that may be filed or asserted against said City at any time for the use of any patented articles or for infringement of any patents, and shall further pay all lawful claims of sub-contractors, material men and laborers, for labor performed and material furnished in the carrying forward, performing or completing of said contract; we, the undersigned, agreeing and assenting that this understanding shall be for the benefit of any sub-contractor, material man or laborer having a just claim, as well as for the obligee herein, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

And the said surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or the work or to the specifications.

Further, the surety hereby agrees that in the event of a default of the contract by the Contractor and an election by said surety to complete the contract, by its own work force or by the work force of another, the contract shall be completed in accordance with each and every, all and singular, term and condition of the contract, including, but not limited to Equal Employment Opportunity Program provisions, Small Business Enterprise Program provisions and Prevailing Wage provisions.

ALTERNATE FORM OF SURETY (CERTIFIED CHECK)

A Certified Check in the sum of

_____ Dollars on _____ Bank of _____
_____ Check No. _____ is herewith submitted and deposited in lieu of bond under the same terms and conditions as set forth in the above bond.

SIGNATURES AND APPROVALS

Signed and sealed in the presence of:

Signature of Witness as to Surety
Complete address of executing office of Surety Company

Telephone No. _____

SURETY

By _____ Surety
Signature of Surety
Name in Print _____
Incorporated in the state of _____
Address: _____

PRINCIPAL AND CONTRACTOR

Playground Equipment Services, L.L.C.
Name of Principal
By _____
Signature of person authorized to sign for Principal

Name in Print _____
Title _____

THE CITY OF CINCINNATI

By _____
City Purchasing Agent

APPROVED AS TO FORM AND SURETY

Assistant City Solicitor

Date _____
CERTIFICATION
Date _____ Amount \$ _____
Fund _____ Code _____
By _____
Director of Finance