

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR COURT RESURFACING AND RELATED WORK

This Agreement between and Owner and Contractor for Court Resurfacing and Related Work (the "Agreement") is made as of the __ day of _____, 2022 by and between the Homewood-Flossmoor Park District, an Illinois unit of local government (the "Park District" or the "Owner"), with its principal place of business at 3301 Flossmoor Road, Flossmoor, Illinois 60422 and _____, an _____ ("Contractor") with its principal place of business at _____, _____, Illinois, _____. The Park District and Contractor may hereinafter be referred to together as the "Parties" or individually as a "Party".

WITNESSETH

That the Park District and Contractor, for the consideration hereinafter named, agree as follows:

1. Labor and Materials. The Contractor shall provide all labor, equipment and materials required to complete the following work: a) Court repair, resurfacing and color finishing of one tennis court; and b) Court repair, resurfacing, color finishing and transformation of a second tennis court into a pickleball court at Orchard Park, 1701 Olive Road, Homewood, and all other improvements as indicated in the RFP Documents for Homewood-Flossmoor Park District 2022 Court Repair, Resurfacing and Color Finishing and Transformation of a Tennis Court into a Pickleball Court, dated June 2, 2022 (the "Work"), attached to and incorporated as part of this Agreement by reference ("RFP Documents").

2. Contract Documents. The Contract Documents consist of this Agreement between the Park District and the Contractor, the RFP Documents, Contractor's Proposal, attached to and incorporated as part of this Agreement as **Exhibit A**, Contractor's Certifications, attached to and incorporated as part of this Agreement as **Exhibit B**, and any modifications issued after the execution of this Agreement. All of the terms, conditions and specifications contained in the Contract Documents are incorporated herein. In the event of conflict between the Contract Documents, this Agreement shall control.

By its execution of this Agreement, Contractor acknowledges, agrees, represents, and warrants that Contractor has carefully and thoroughly examined the Contract Documents, and the Contract Documents are full and complete, include all items necessary for the proper execution and completion of the Work, are sufficient to have enabled the Contractor to determine the cost of the Work and the time required for performance of the Work and to enable Contractor to construct the Work indicated therein in accordance with laws, ordinances, codes, regulations and rules applicable to the Work, and otherwise to fulfill all its obligations thereunder, including, but not limited to, Contractor's obligation to construct the Work for an amount not in excess of the Contract Sum on or before the date(s) of Final Completion. The failure or omission of Contractor to obtain, receive or examine the Contract Documents and become knowledgeable with respect to conditions of the Work, or to seek needed clarification from the Park District shall in no way be cause to alter this Agreement or the Contract Sum.

By its execution of this Agreement, Contractor represents and warrants that Contractor has visited the site, become familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. Before commencing activities, the Contractor shall: a) take field measurements and verify field conditions; b) carefully compare this and other information known to the Contractor with the Contract Documents; and c) promptly report errors, inconsistencies, or omissions discovered to the Park District.

3. Commencement and Completion. The Work for each site shall commence on such a date agreed upon by the Parties. Final Completion for shall be on or before August 12, 2022. Final Completion means the date the Work

has been fully performed, all Work has been completed in accordance with the Contract Documents, including correction of any defective Work, and the Park District has inspected and accepted the completed Work and approved final payment to the Contractor.

The Contractor shall carry the Work forward regularly, diligently, uninterruptedly and expeditiously and in a good workmanlike and professional manner at such a rate of progress and with an adequate work force as will ensure the completion of the Work in accordance with the Contract Documents by the Final Completion date. It is expressly understood and agreed by and between Contractor and Park District that the time for completion of the Work is a reasonable time, taking into consideration the average climatic range, usual industrial conditions, and all other conditions and actors prevailing in this locality.

4. Performance of Work.

a. Contractor shall perform all Work in a good and workmanlike manner. Contractor shall maintain sufficient staff and crews to perform all Work in an expeditious manner consistent with the interests of the Park District. Contractor shall promptly notify the Park District immediately in writing: (i) of any information required from the Park District and necessary for Contractor to complete its Work in a timely manner; and (ii) of any Work requested by the Park District or required for the project that is not included in the scope of Work reflected in the Contract Documents. Contractor shall be solely responsible for means and methods selected in performing the Work. Contractor shall supervise all Work so that it is performed in a safe and expeditious manner. Contractor shall be solely responsible for the Work of its employees and its subcontractors' and suppliers' employees. Contractor shall keep all documents and information related to the project confidential and, except as required by law, shall not disclose such documents or information to any person or other party except the employees of Contractor and its subcontractors who need such documents or information to perform the Work and complete the project.

b. Contractor shall confine all equipment, the storage of materials and the operations of its workers, to limits indicated by law, ordinances, permits, or directions of the Park District and shall not unreasonably encumber the project site with such materials. The project site shall not be utilized for the storage of vehicles, materials, equipment, or fixtures not intended for the Work to be performed.

c. Contractor shall notify all utility companies, public and private, as necessary in advance of commencing performance of the Work. The responsibility for moving water lines, gas lines, wire lines, service connections, water and gas meter boxes, water and gas valve boxes, light standards, cable ways, signals and all other utility appurtenances which are within the limits of the proposed construction will be assumed by the Contractor, at no additional compensation. The Contractor shall verify the location of all utilities prior to the start of construction and shall be responsible for the preservation of existing utility installation and the cost of providing precautionary supports, braces, or other equipment to insure against damage to said utility installation. The cost to repair and replace any new or existing utilities damaged will be paid for by the Contractor.

d. If Contractor uncovers or discovers any concealed condition differing materially from conditions depicted in the Contract Documents or differing from conditions reasonably anticipated or inherent in the Work, Contractor shall immediately stop the Work and notify the Park District of the condition in writing. The Park District shall then issue written directions. Contractor shall not proceed with the Work until the Park District has issued written directions. The contract time and Contract Sum shall be equitably adjusted if necessitated by such directions of the Park District.

5. Contract Sum. The Park District agrees to pay Contractor for the proper and timely performance of the Work in strict accordance with the Contract Documents the following amount: _____00/100 Dollars (\$_____.00) (the "Contract Sum").

6. Payment. Payment shall be made by the Park District to the Contractor upon the Park District's receipt of an invoice itemizing the Work properly performed as determined by the Park District, and delivery of lien waivers and sworn statements, for the period covered by the invoice. The Contract Sum shall be paid in accordance with the Local Government Prompt Payment Act, 50 ILCS 505/1 *et seq.* upon Final Completion of the Work.

Final payment shall not become due until Contractor has fully performed the Work in accordance with the Contract Documents, including but not limited to correction of any defective Work, and delivery of all required documentation in accordance with Section 7 below. Acceptance of final payment by the Contractor, a subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the application for final payment. Final payment by the Park District shall not relieve Contractor of the responsibility for the correction of any and all defects in the Work performed. Contractor shall correct all defects as notified for the applicable warranty period after final payment.

7. Waiver of Liens. Contractor for itself and for all its sub-suppliers and subcontractors, agrees that no mechanic's lien or other claim shall be filed or maintained by Contractor or by any sub-supplier, subcontractor, laborer or any other person, whatsoever, against the Park District's funds for or on account of any Work furnished under this Agreement. Prior to the payment of the Work, Contractor shall provide: a) for final payment, a final waiver of lien from Contractor and each sub-supplier and sub-contractor for the full amount of each subcontract for the Work, showing all materials and labor have been paid in full; and b) sworn affidavit, in triplicate, containing such information and in such form to comply with the Illinois Mechanics Lien Act (770 ILCS 60/23), showing in detail the sources of all labor and materials used in the Work, including the names and addresses of sub-suppliers and subcontractors and showing amounts paid for each.

Final payment shall not become due until the Contractor has fully performed the Work in accordance with the Contract Documents, including but not limited to delivery of all manufacturer's and supplier's warranties, and has delivered to the Park District a complete release of all liens arising out of this Agreement or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Park District to indemnify the Park District against such lien. If a lien remains unsatisfied after payments are made, the Contractor shall refund to the Park District all money that the Park District may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

8. Changes in the Work.

a. By appropriate modification, changes in the Work may be accomplished after execution of the Agreement. The Park District may order changes in the Work within the general scope of the Agreement consisting of additions, deletions, or other revisions, with the Contract Sum and contract time being adjusted accordingly. Such changes in the Work shall be authorized by written change order signed by the Park District and Contractor ("Change Order"). Upon issuance of the Change Order, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order. Contractor shall be solely responsible for the cost of additional work and materials under any Change Order resulting from Contractor's negligent act or omission or failure to perform the Work in accordance with the Contract Documents.

b. No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Contract Sum or change in the contract time unless and until such alteration or addition has been authorized by a Change Order executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents and applicable law. In the event Contractor has a claim for an increase in the Contract Sum or time to complete the Work, Contractor shall provide written notice to the Park District before proceeding to execute the Work. Contractor shall not perform such Work associated with the claim until approved by written Change Order by the Park District. Accordingly, no course of conduct or dealing between the Parties, nor any express or implied acceptance of alterations or additions to the Work and no claim that the Park District has been unjustly enriched shall be the basis of any claim to an increase in the Contract Sum or change in the contract time.

c. No Change Order shall be approved or paid unless preceded by a written direction for the Change Order is provided by the Park District. This requirement cannot be waived by conduct, custom, or practice with respect to this project or other projects. There shall be no implied or constructive change orders.

d. Adjustments to the Contract Sum for changes in the Work other than changes in the Work involving items for which unit prices were requested by Park District and provided in Contractor's Proposal, shall be made as follows:

i. In the manner agreed to by the Parties, or in the absence of agreement then the combined allowance for overhead and profit in connection with changes to the Work shall be the lesser of the amount, if any, included in the Contractor's Proposal, or the following: (a) five percent (5%) of the cost of the change in the Work involved if performed by the Contractor not involving subcontractors, or (b) five percent (5%) of the cost of the change in the Work involved performed by subcontractors, plus two percent (2%) of the cost of the change in the Work for the Contractor's supervision of the work performed by the subcontractors. When both additions and credits covering related Work are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

e. Overtime, if and when specifically authorized in advance in writing by the Park District shall be paid by the Park District on the basis of premium payment if any, plus the cost of insurance and taxes based on the premium payment period. No overhead or profit may be charged for overtime. The Contractor shall not be entitled to any payment for overtime necessitated by the failure of the Contractor to perform the Work in accordance with the Contract Documents including without limitation to the Contractor's failure to prosecute the Work diligently and on an uninterrupted basis and with a sufficient work force so as to achieve completion of the Work within the time and in the manner contemplated by the Contract Documents or otherwise due to the fault of the Contractor. In such instances if the Park District requires the Contractor to perform Work on an overtime basis, all costs for and associates with such overtime shall be borne by the Contractor.

9. Progress Meetings and Coordination. On a weekly basis until Final Completion, or as otherwise agreed by the Parties, the Park District and Contractor shall participate in weekly progress meetings as applicable and necessary. The Contractor shall require its subcontractors and suppliers to be present at such meetings as appropriate based on the status of ongoing and scheduled Work. The Contractor shall report on the status of the Work, and the Parties shall discuss and attempt to resolve all requests for information, submittals, Change Order requests, and all other open items then pending.

10. Owner's Right to Correct the Work. If Contractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within a seven (7) day period after receipt of written notice from the Park District to commence and continue correction of such default or neglect with diligence and promptness, the Park District may, without prejudice to other remedies the Park District may have, correct such deficiencies. In such case, the Park District shall deduct from payments then or thereafter due Contractor the cost of correcting such deficiencies, including compensation to the Park District for any and all expenses related thereto. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to the Park District.

The rights and remedies of the Park District stated in this Agreement shall be in addition to and not in limitation of, any other rights of the Park District granted at law or in equity.

11. Delays. In the event the Work is delayed due to a cause beyond the reasonable control of Contractor, including strikes, labor disputes, lockouts, fire, shortages of labor or material, inclemency of weather, accidents, casualties, pandemic outbreaks, or government orders, Contractor shall not be liable for any damages caused by such delays, shortages, or disruptions and, provided that Contractor is in compliance with all other relevant provisions of this Agreement, the contract time shall be extended for such reasonable time as the Park District may determine; provided, however, that such extension of contract time shall be net of any delays caused by or due to the fault or negligence of Contractor or which are otherwise the responsibility of Contractor and shall also be net of any contingency or "float" time allowance included in Contractor's construction schedule. Contractor shall, in the event of any occurrence likely to cause a delay, cooperate in good faith with the Park District to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal. Any such extension of contract time pursuant to this section shall be reduced to a Change Order. Extension of contract time pursuant to this section shall be the Contractor's sole and exclusive remedy for delay.

12. Warranties. Contractor warrants to the Park District that materials and equipment furnished under the Agreement will be of the best quality and new, that the Work will be free from defects and deficiencies, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Contractor shall promptly correct any defective Work. Payment by the Park District for any Work later determined to be defective shall not relieve Contractor of its obligation to correct defective Work.

All warranties shall include labor and materials and shall be signed by the manufacturer or subcontractor as the case may be and countersigned by Contractor. All warranties shall be addressed to the Park District and delivered to the Park District. Except as otherwise provided in this Agreement, all warranties shall become effective on the Final Completion of the Work and shall run for a twelve (12) month period, unless a longer period is provided for in the Contract Documents or by law. Where warranties overlap, the more stringent requirement shall govern. Contractor shall promptly repair and replace, as determined by the Park District, any defects or deficiencies at no charge to the Park District during any warranty period.

13. Correction of the Work. In addition to the Contractor's obligations under Section 12, if, within one year after the date of Final Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 12, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Park District to do so unless the Park

District has previously given the Contractor a written acceptance of such condition. The Park District shall give such notice promptly after discovery of the condition. The obligation under this Section 13 shall survive acceptance of the Work under the Contract Documents and termination of the Agreement. Corrective Work shall be warranted to be free from defects for a period equal to the longer of twelve (12) months after the completion of the corrective Work or one (1) year from the date of Final Completion of the Work, or such longer period of time as may be prescribed by law or in equity or by the terms of any applicable special warranty. Notwithstanding the foregoing, Contractor shall correct Work deficiently or defectively performed and replace defective or non-conforming materials and equipment, even though such deficiency, defect or non-conformity may be discovered more than one (1) year after Final Completion, if the correction is of a latent defect and arises from poor workmanship or improper materials or equipment, or is required to be made to Work, materials or equipment covered by the Contractor or a subcontractor contrary to the Park District's request or to the request of a governmental officer, or to the requirements of the Contract Documents or governmental requirements, and was therefore not visible for inspection by the Park District or governmental officer, as applicable, at the time of inspection. Contractor shall, within a reasonable time under the circumstances, after receipt of written notice thereof, correct, repair, replace and otherwise make good any defects or non-conformity in the Work. If the Contractor fails to correct nonconforming Work within a reasonable time, the Park District may correct it in accordance with Section 10.

14. Cleaning Up. The Contractor shall keep the project site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement. At completion of each site visit, the Contractor shall remove from and about the site waste materials, rubbish, the Contractor's tools, equipment, machinery and surplus materials. If the Contractor fails to clean up as provided herein, the Park District may do so and the cost thereof shall be charged to the Contractor.

15. Safety of Persons and Property.

- a. The Contractor shall take reasonable precautions for the health and safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
 - (i). employees engaged in the Work, Park District employees and patrons and other persons who may be affected thereby; and
 - (ii). the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's subcontractors or sub-subcontractors.
- b. The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- c. Contractor shall comply with, and require all of its employees, subcontractors and invitees to comply with, all applicable COVID-19/Coronavirus-related health and safety laws, rules, regulations, orders, guidelines, or guidance from any source with jurisdiction over this project, including but not limited to, guidelines promulgated by the Centers for Disease Control and Prevention ("CDC"), the Occupational Safety and Health Administration ("OSHA"), the Illinois Department of Health ("IDPH"), and the Cook County Health Department.

- d. The Contractor shall promptly remedy damage and loss to Park District property caused in whole or in part by the Contractor, a subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible. The Park District reserves the right to restore any such property and deduct from payments then or thereafter due Contractor the cost of restoring such property, including compensation to the Park District for any and all expenses related thereto. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to the Park District.

16. Insurance. The Contractor shall acquire and keep in force the following insurance coverage:

- a. **Commercial General and Umbrella Liability Insurance.** Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 01 04 13, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, smoke and fire, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Park District, its elected and appointed officials, employees and agents shall be included as an additional insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Park District. Any insurance or self-insurance maintained by the Park District shall be excess of the Contractor's insurance and shall not contribute with it.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from smoke, fire, pollution, explosion, collapse, or underground property damage.

If the Contractor maintains higher limits than the minimums shown above, the Park District requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Park District.

- b. **Continuing Completed Operations Liability Insurance.** Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella liability insurance with a limit of not less than \$2,000,000 each occurrence for at least three years following completion of the Work. Continuing CGL insurance shall be written on ISO occurrence form CG 00 01 04 13, or substitute form providing equivalent coverage, and shall, at minimum, cover liability arising from products-completed operations and liability assumed under an insured contract. Continuing CGL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit. Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

c. Business Auto and Umbrella Liability Insurance. Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

d. Workers Compensation Insurance. Contractor shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If the Park District has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Agreement, the Contractor shall waive subrogation and all other rights against the Park District and its officers, officials, employees, and agents for recovery of damages arising out of or incident to the Contractor's work.

e. General Insurance Provisions

1. Evidence of Insurance. Prior to beginning Work, Contractor shall furnish to the Park District with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. All certificates shall provide for 30 days' written notice to the Park District prior to the cancellation or material change of any insurance referred to therein. Written notice to the Park District shall be by certified mail, return receipt requested.

Failure of the Park District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Park District to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance. The Park District shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from beginning the Work until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the Park District

Failure to maintain the required insurance may result in termination of this Agreement at the Park District's option. Contractor shall provide certified copies of all insurance policies required above within 10 days of the Park District's written request for said copies.

2. Acceptability of Insurers. For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Park District has the right to reject insurance written by an insurer it deems unacceptable.

3. Cross-Liability Coverage. If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

4. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to the Park District. At the option of the Park District, the Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the Park District, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

5. Subcontractors. Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified above. When requested by the Park District, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

17. Indemnification and Hold Harmless. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the Park District and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses including but not limited to legal fees (attorney's and paralegals' fees and court costs), arising out of or resulting from the performance of Contractor's performance of the Work, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, other than the work itself, including the loss of use resulting there from and (ii) is caused in whole or in part by any wrongful or negligent act or omission of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. Contractor shall similarly protect, indemnify, defend and hold and save harmless the Park District, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Contractor's breach of any of its obligations under, or Contractor's default of, any provision of this Agreement.

Nothing contained herein shall be construed as prohibiting the District, its officers, employees or agents from defending, through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings or actions brought against them. The District's participation in its defense shall not remove the Contractor's duty to indemnify, defend and hold the District harmless as set forth herein.

The indemnification required hereunder shall not be limited by reason of the enumeration of insurance coverage herein provided. Contractor's indemnification of the Park District shall survive the termination or expiration of the Agreement.

18. Termination.

a. The Park District may, at any time, terminate the Agreement in whole or in part for the Park District's convenience and without cause. Termination by the Park District under this section shall be by a notice of termination delivered to the Contractor specifying the extent of the termination and the effective date. Upon receipt of a notice of termination, the Contractor shall immediately, in accordance with instructions from the Park District: (1) cease operation as specified in the notice; (2) place no further orders; (3) enter into no further

subcontracts for materials, labors, services or facilities except as necessary to complete continued portions of the Work; (4) terminate all subcontracts and orders to the extent they relate to the Work terminated; (5) proceed to complete the performance of Work not terminated; and, (6) take actions that may be necessary or that the Park District may direct, for the protection and preservation of the terminated Work. The Contractor shall recover payment for approved and properly performed Work completed prior to the effective date of termination.

b. The Park District may terminate the Agreement, in whole or in part, for cause as follows:

(i) If Contractor fails to provide the Work as required in the Contract Documents, or otherwise breaches or defaults under any provision of this Agreement and does not remedy such failure, breach or default within seven (7) days after demand from the Park District to take corrective action, or in the event of repeated or multiple failures or defaults by Contractor, the Park District may immediately terminate this Agreement and enter into an agreement with another contractor or contractors to provide the Work. In such event: a) the Park District shall not pay Contractor for any portion of the Work not completed in accordance with the Contract Documents; b) the Park District shall deduct from payments due to the Contractor the cost of correcting any deficiencies in accordance with Section 10 of this Agreement; and c) Contractor shall be liable to the Park District for the increased cost to the Park District of obtaining services from the substitute contractor(s).

(ii) If Contractor is adjudged as bankrupt, or if Contractor makes a general assignment for insolvency, or if any provision of the bankruptcy law is invoked by or against Contractor, then notwithstanding any other rights or remedies granted the Park District, the Park District may, without prejudice to any other right or remedy, a) immediately terminate the retention of Contractor and/or b) finish or cause to be finished the Contractor's services required under this Agreement by whatever method and by whichever persons the Park District deems expedient. In such case, Contractor shall not be entitled to receive any payment until the Work is completed. If the unpaid balance of the Contract Sum exceeds: (1) the expenses of completing the Work, including compensation for additional managerial and administrative services, plus (2) the Park District's losses and damages because of Contractor's default (collectively "Park District Expenses and Damages"), such excess shall be paid to Contractor. If the Park District Expenses and Damages exceed such unpaid balance, Contractor shall pay the difference to the Park District promptly on demand and the Park District may resort to any other rights or remedies the Park District may have by law or under this Agreement.

c. Upon termination of this Agreement for any reason as provided herein: (1) Contractor shall not be entitled to damages or lost profits; and (2) except as otherwise provided herein, the rights and obligations of the Parties shall cease automatically except for the rights and obligations of the Parties accruing but unsatisfied prior to termination.

19. Compliance with Laws and Permits. Contractor shall comply with all applicable local, state and federal codes, laws, ordinances, rules and regulations. Contractor shall be licensed and bonded to perform the Work hereunder and shall, at its sole cost and obligation, be responsible for obtaining all permits required to perform its duties under this Agreement. Any breach by Contractor of the foregoing laws, regulations and rules shall constitute a breach by Contractor of this Agreement. Contractor's Compliance and Certification Attachment is attached to and incorporated as **Exhibit B** to this Agreement.

20. Choice of Law and Venue. This Agreement is governed by the laws of the State of Illinois. Any suit or action arising under this Agreement shall be commenced in the Circuit Court of Cook County, Illinois, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs of litigation. Contractor acknowledges that each provision of this Agreement is important and material to the business and success of the Park District, and agrees that any breach of any provision of this Agreement is a material breach of the Agreement and may be cause for immediate termination of this Agreement. In the event of a breach, Contractor shall also pay to the Park District all damages (including, but not limited to, compensatory, incidental, consequential, and punitive), which arise from the breach, together with interest, costs, and the Park District's reasonable attorneys' fees.

21. No Liability. The Park District is not responsible or liable for any injury, damages, loss or costs sustained or incurred by any person including, without limitation Contractor's employees, or for any damage to, destruction, theft or misappropriation of any property, relating in any way, directly or indirectly, to Contractor's Work and obligations under this Agreement. The Park District is not liable for acts or omissions of Contractor or any of Contractor's employees, subcontractor's, agents or other persons purporting to act at the direction or request, on behalf, or with the implied or actual consent, of Contractor.

22. No Third Party Beneficiary. This Agreement is entered into solely for the benefit of the contracting Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and/or entity who is not a party to this Agreement or to acknowledge, establish or impose any legal duty to any third party. Nothing herein shall be construed as an express and/or implied waiver of any common law and/or statutory immunities, defenses and/or privileges of the Park District and/or Contractor, and/or any of their respective officials, officers and/or employees.

23. No Waiver. Waiver of any of the terms of this Agreement shall not be valid unless it is in writing and signed by all Parties. The failure of claimant to enforce the provisions of this Agreement or require performance by opponent of any of the provisions, shall not be construed as a waiver of such provisions or affect the right of claimant to thereafter enforce the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of the Agreement.

24. Independent Contractor. Contractor acknowledges that it is an independent contractor; that it alone retains control of the manner of conducting its activities in furtherance of this Agreement; that it, as well as any persons or agents as it may employ, are not employees of the Park District; and that neither this Agreement, nor the administration thereof, shall operate to render or deem either Party hereto the agent or employee of the other.

25. Non-Assignment. This Agreement is non-assignable in whole or in part by the Contractor, and any assignment shall be void without prior written consent of the Park District.

26. Subcontracts. Any subcontract that Contractor enters into for the Work shall be in writing and shall specifically provide that the Park District is an intended third-party beneficiary of such subcontract and that the Park District shall have the right to enforce the subcontractor's obligations thereunder after the occurrence of a default under the Agreement by the Contractor. By appropriate written agreement, the Contractor shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Park District.

27. Notices. Notices shall be deemed properly given hereunder if in writing and either hand delivered or sent by United States certified mail, return receipt requested, postage prepaid, or by email transmission with the sending Party retaining confirmation of receipt, to the Parties at their respective addresses provided below, or as either Party may otherwise direct in writing to the other Party from time to time:

If to the Park District: Homewood -Flossmoor Park District
Attn: Doug Boehm
3301 Flossmoor Rd.
Flossmoor, IL 60422
Email: dboehm@hfparks.com

If to Contractor:

Notices personally delivered shall be deemed given on the date of delivery, notices sent by certified mail shall be deemed delivered the second business day following deposit in the mail, and notices sent by email transmission shall be deemed given on the date of transmission if sent on or before 5:00 PM on a business day, or, if later, the next business day.

28. Entire Agreement; No Amendment. This Agreement contains the entire agreement between the Parties, and no statement, promise or inducement made by either Party to the agency of either Party that is not contained in this written Agreement shall be valid or binding. No modification of this Agreement shall be effective unless in writing and dated subsequent to the date of this Agreement and signed by an authorized representative of each Party.

29. Headings. The headings for each paragraph of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraphs or of this Agreement nor in any way affect this Agreement.

30. Severability. The invalidity of any section, paragraph or subparagraph of this Agreement shall not impair the validity of any other section, paragraph or subparagraph. If any provision of this Agreement is determined to be unenforceable, such provision shall be deemed severable and the Agreement may be enforced with such provision severed or as modified by such court.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed by a duly authorized official thereof effective as of date written above.

HOMEWOOD-FLOSSMOOR PARK DISTRICT

By:

President, Board of Park Commissioners

Attest:

Secretary, Board of Park Commissioners

By:

Its:
