

BID DOCUMENTS FOR:

HOMEWOOD-FLOSSMOOR PARK DISTRICT

**NuToys Playsense Component System or Equal and Installation at Heritage Park
Riegel Road and Idlewild Lane
Homewood, Illinois 60430**

BID OPENING ON:

Thursday, May 25, 2023

TIME: 10:00 a.m.

LOCATION OF BID OPENING:

**HOMEWOOD-FLOSSMOOR PARK DISTRICT
GOLDBERG ADMINISTRATION CENTER
3301 FLOSSMOOR RD.
FLOSSMOOR, IL 60422**

BID BOND REQUIRED

Any questions please contact:

**Doug Boehm
Superintendent of Parks & Planning
708/957-0300
dboehm@hfparks.com**

INVITATION TO BID

**Homewood-Flossmoor Park District
3301 Flossmoor Rd
Flossmoor, IL 60422**

Re: NuToys Playsense Component System or Equal and Installation at Heritage Park

Project Location: Riegel Road and Idlewild Lane, Homewood, Illinois

The Homewood-Flossmoor Park District (the "District") is accepting bids for the purchase and installation of playground equipment at Heritage Park Playground.

Specifications and Contract Documents may be obtained beginning Friday, May 12, 2023 in PDF format at the District's website: hfparks.com/bidsrfps, by emailed request to abrabec@hfparks.com, or at the District's Administrative Office at the Goldberg Center, 3301 Flossmoor Road, Flossmoor, IL 60422, Monday – Friday, 8:00 a.m. – 5:00 p.m.

Each bid must be placed in a sealed, opaque envelope with the Bidder's name, the date and time of the bid deadline and marked "**Sealed Bid**: – Homewood-Flossmoor Park District NuToys Playsense Component System or Equal and Installation at Heritage Park", and addressed to the Homewood-Flossmoor Park District, 3301 Flossmoor Road, Flossmoor, IL 60422, **Attention: Doug Boehm, Superintendent of Parks & Planning**. Bids will be received until **10:00 a.m. on Thursday, May 25, 2023**, at which time the bid proposals will be publicly opened and read aloud at the Goldberg Administration Center, 3301 Flossmoor Road, Flossmoor, IL 60422.

The Homewood-Flossmoor Park District Board of Park Commissioners reserves the right to waive all technicalities, to accept or reject any or all bids, to accept only portions of a proposal and reject the remainder without disclosure for any reason. Failure to make such a disclosure will not result in accrual of any right, claim or cause of action by any Bidder against the Homewood-Flossmoor Park District.

Bids shall not include federal excise tax or state sales tax for materials and equipment to be incorporated in, or fully consumed in the performance of, the work. An Exemption Certificate will be furnished by the Homewood-Flossmoor Park District on request of the Bidder, for use in connection with this project only.

The Work of this Project is subject to the Illinois *Prevailing Wage Act*, 820 ILCS 130/0.01 *et seq.* A prevailing wage determination has been made by the Illinois Department of Labor for public works projects in Cook County. The Contract entered into for the Work will be drawn in compliance with said law and proposals should be prepared accordingly and provide for payment of all laborers, workmen, and mechanics needed to perform the Work at no less than the prevailing rate of wages (or the prevailing rate for legal holiday and overtime work) for each craft, type of worker, or mechanic.

All bid proposals must be accompanied by a bid bond or bank cashier's check payable to the Homewood-Flossmoor Park District for ten percent (10%) of the amount of the bid as provided in the Instructions to Bidders. No proposals or bids will be considered unless accompanied by such bond or check.

The Contractor selected will also be required to comply with all applicable federal, state and local laws, rules, regulations and executive orders including but not limited to those pertaining to equal employment opportunity.

The District encourages women and minority business firms to submit bids and encourages bidders to utilize minority businesses for supplies, equipment and services.

Doug Boehm, Superintendent of Parks and Planning
Homewood-Flossmoor Park District

INSTRUCTIONS TO BIDDERS

1. DEFINITIONS

The Homewood-Flossmoor Park District and Owner are one and the same. The Owner's representative, Doug Boehm, can be contacted at the Homewood-Flossmoor Park District by phone or email: (708) 957-0300, dboehm@hfparks.com.

The word "Contractor" or "Bidder" shall mean the party bidding for or entering the Contract for the performance of the Work covered by the written Specifications and Drawings, and his/her legal representatives or authorized agents.

2. BID FORM

- A. Each bid shall be made on the "Bid Form" furnished by the District. The Bid Form shall be executed properly and all writing, including all signatures, shall be with black ink. Failure to use the Bid Form provided could result in rejection of the bid.
- B. All applicable blank spaces on the "Bid Form" shall be fully completed, including the List of Subcontractors and the Bidder's Reference List, and all amounts shall be in words as well as in figures where applicable.
- C. The bid shall bear the legal name of the business organization. The signatures shall be in longhand and executed by a duly authorized official of the Bidder's organization and the name of the official and title shall be typed below the signature.
- D. Erasures, interlineations, corrections, or other changes on the "Bid Form" shall be explained or noted over the signature of the Bidder. No bid submitted with deviations or reservations from the full contract called for will be considered.
- E. Bidders' prices are to include the delivery of all materials; including plant, equipment, supplies, tools, scaffolding, transportation, insurances, bonds, warranties, and all other items and facilities, and the performance of all labor and services, necessary for the proper completion of the Work except as may be otherwise expressly provided in the Contract Documents. Bids shall not include federal excise tax or state sales tax for materials to be incorporated in, or totally consumed in the prosecution of, the Work. An exemption certificate will be furnished by the Park District upon request of the Bidder.
- F. Bidder must acknowledge all Addenda received in the spaces provided on the Contractor Bid Form. By submitting a bid, Bidder indicates that all considerations issued by Addendum are incorporated in the bid.
- G. Attached to the Bid Form will be the Contractor's Compliance and Certification Attachment regarding the Bidder's compliance with applicable laws. **Failure of a Bidder to complete/submit a required certification shall be the basis for immediate rejection of that Bidder's bid.** The certification of the successful Bidder shall become a part of the Contract with the Park District.
- H. Bid documents shall be delivered or mailed in time for delivery to the foregoing address no later than Thursday, May 25, 2023 at 10:00 a.m. Oral bids or oral modifications to bids will not be considered. It is the sole responsibility of the Bidder to see that his bid is received in proper time. **No faxed or e-mail bid or modification of a bid will be considered.** The Park District is not responsible for the premature opening of bids not marked as required. Any bid opened prematurely due to the failure of the Bidder to mark the envelope in accordance with these Bid Documents will be considered non-responsive.
- I. No bid can be withdrawn prior to the opening of the bids unless a written request for any such withdrawal, showing good cause for said withdrawal, is first delivered to the District at the foregoing address prior to commencement of the opening of bids. No Bidder may withdraw a bid after opening of the bids.
- J. Bids will be publicly opened on the due date.

3. EXAMINATION OF DOCUMENTS AND SITE

Each Bidder shall visit the site(s) of the proposed Work and fully acquaint himself with conditions, as they exist, and shall undertake such additional inquiry and investigation, as he shall deem necessary so that he may fully understand the requirements, facilities, possible difficulties and restrictions attending the execution of the Work under the Contract. Bidder shall thoroughly examine and be familiar with all of the Bid Documents including, but not limited to, the Drawings and the written Specifications. Any conflicts or discrepancies found between or among Bid Documents including, but not limited to, the Drawings and written Specifications and the site conditions, or any errors, omissions or ambiguities

in the Drawings or written Specifications shall be immediately reported to the Park District and written clarification requested prior to submission of a bid.

The failure or omission of any Bidder to obtain, receive or examine any form, instrument, or information or to visit the Project site(s), and become knowledgeable with respect to conditions there existing, or to seek needed clarification shall in no way relieve any Bidder from any obligations with respect to his bid. By submitting a bid, the Bidder agrees, represents and warrants that he has undertaken such investigation as he deemed necessary, has examined the site(s) and the Bid Documents, has obtained all needed clarifications and where the Bid Documents indicate in any part of the Work, that a given result be produced, that the Bid Documents are adequate and the required result can be produced as indicated in the Specifications and Drawing(s). Once the award has been made, failure to have undertaken and completed the foregoing tasks shall not be cause to alter the original Contract or to request additional compensation.

4. INTERPRETATIONS

All questions about the Bid Documents need to be submitted in writing to the Homewood-Flossmoor Park District and shall be received on or before 1:00 p.m. on May 19, 2023. Submit questions via e-mail to Doug Boehm, dboehm@hfparks.com, fax (708) 957-8574, or via mail at 3301 Flossmoor Rd., Flossmoor, IL 60422.

The Park District shall in all cases determine the amount or quantity of the several kinds of Work which are to be paid for under this Contract, and shall decide all questions which may arise relative to the execution of the Contract on the part of the Contractor, and all estimates and decisions shall be final and conclusive. The Park District shall have the right to make alterations in the lines, grades, plans, forms, or dimensions of the Work herein contemplated either before or after the commencement of the Work. If such alterations diminish the quantity of the Work to be done, they shall not constitute a claim for damage or for anticipated profits on the work dispensed with, or if they increase the amount of Work, such increase shall be paid according to the quantity actually done and at the price or prices stipulated for such Work in the Contract. The Park District reserves the right to approve, an equal to or superior to product or equipment required under the Specifications, or to reject as not being and equal to or superior to the product or equipment required under the Specifications. If the Bidder is in doubt as to the interpretation of any part of the Bid Documents, or finds errors, discrepancies or omissions from any part of the Contract Documents, he must submit a written request for interpretation thereof not later than five (5) days prior to opening of bids to the Park District. If an error or omission is discovered in the Bid Documents after the bid opening, the Park District reserves the right: i) to determine whether to require the submission of new bids; or ii) if the error or omission is of such a nature that it was reasonably discoverable upon a careful review of the Bid Documents, to award the Contract to the lowest responsive and responsible Bidder as determined by the Park District and to require that Contractor to perform the Work in accordance with an issued correction by the Park District and for the amount bid by the Contractor. Such decisions are final and not subject to recourse. Errors and omissions made by the Bidder cannot be corrected after the bid opening.

5. ADDENDA

Any interpretation, correction to, or addition to the Bid Documents will be made by written Addendum and will be delivered to each prime Bidder of record. The written Addenda constitute the only interpretations of the Bid Documents; the Park District accepts no responsibility for any other claimed interpretations or communications.

It is the responsibility of each Bidder to verify that he has received all Addenda prior to submitting a bid. It is also the responsibility of each Bidder to verify that all subcontractors and material suppliers whose prices are incorporated in the Bidder's bid are familiar with the Bid Documents in their entirety, including all Addenda issued up to the time of bid opening.

In the event a conflict or omission is discovered in the Bid Documents after the issuing of the last Addendum such that an interpretation cannot be issued by the Park District prior to bidding, the Bidder is directed to estimate on and provide the quantity and quality of material and labor consistent with the overall represented and indicated Work so as to provide all materials, equipment, labor, and services necessary for the completion of the Work in accordance with the Bid Documents.

6. SUBSTITUTIONS DURING BIDDING

Unless otherwise indicated, the use of brand names in the Specifications are used for the purpose of establishing a grade or quality. Bidders proposing to use an alternate that is equal to or superior to in every respect the product or material required by the Specifications must request approval in writing to the Park District at least seven (7) business days prior to the bid opening and mark the item as 'or approved equal'.

Additionally, Bidders requesting approval for use of an alternate must provide certification by the manufacturer that the substitute proposed is equal to or superior in every respect to that required by the Contract Documents, and that its in-place performance will be equal to or superior to the product or equipment specified in the application indicated. The Bidder, in submitting the request for substitution, waives the right to additional payment or an extension of Contract Time because of the failure of the substitute to perform as represented in the request for substitution.

The Park District may request additional information or documentation necessary for evaluation of the request for substitution. The Park District will notify all Bidders of acceptance of the proposed substitute by means of an Addendum to the Bid Documents. Park District's approval of a substitute during bidding does not relieve the Contractor of the responsibility to submit required shop drawings and to comply with all other requirements of the Contract Documents, including but not limited to proper performance of all components of the Work and suitability for the uses specified.

Bids proposing alternates not previously approved by the Park District will be considered non-responsive and rejected. The Park District reserves the right to determine whether a substituted selection, in its judgment, is equal to or better quality and therefore an acceptable alternate. Such decisions are final and not subject to recourse.

7. MODIFICATION OR WITHDRAWAL OF BIDS

Bidders may withdraw or cancel their bids at any time prior to the advertised bid opening time by signing and submitting a request for said withdrawal. After the bid opening time, no bid shall be withdrawn or canceled for a period of sixty (60) calendar days.

8. QUALIFICATION OF BIDDERS

Bidders must be able to demonstrate that they: 1) have experience in performing and have successfully performed and are still actively engaged in performing work similar in kind and scope to the Work of the Project; and 2) are able to show that they have adequate laborers and materials to successfully complete the Work as indicated in the Bid Documents and within the time required by the Bid Documents. The Contractor shall not have been debarred or determined ineligible for public contracts by any governmental agency.

The following information must be attached to the bid proposal. Failure to do so may result in disqualification of the Bidder.

- A. On a separate sheet, list all projects your organization has in progress, giving the name of the project, project description, project address, owner and telephone number, architect and telephone number, contract amount, percent complete, and scheduled completion date.
- B. On the Bidder's Reference List form provided herein, list at least three (3) projects your organization has completed in the past five (5) years, which are comparable in scope, giving the name of the project, project description, project address, owner and telephone number.
- C. On the List of Subcontractors form provided herein, provide a list of anticipated subcontractors, if any, including their firm names, addresses and telephone numbers. All subcontractors to be used shall be approved by the Owner. If the Contractor subcontracts any part of the Work for this project, the Contractor shall not under any circumstances be relieved of his liabilities and obligations; any subcontractor for this project will be recognized only in the capacity of an employee of the Contractor.
- D. On a separate sheet, list all administrative proceedings and litigation filed by or against Bidder in the past five (5) years, including the name and case number, name/jurisdiction of the court or administrative agency, and a summary of each claim/case, including current status and if no longer pending, the disposition. The foregoing includes but is not limited to information regarding any proceedings and actions taken by any governmental agency to debar or disqualify the Bidder from bidding on public contracts, including the name of the agency initiating the proceeding/action, the nature of the proceeding/action, the claimed basis for the proceeding/action and the current status or disposition of the proceeding/action.
- E. Other required submittals include: Bid Form; Contractor's Compliance and Certification Attachment/ Substance Abuse Prevention Program Certification. **Failure of a Bidder to complete/submit these documents shall be the basis for immediate rejection of that Bidder's bid.**
- F. The Park District reserves the right to require of any Bidder such information to verify the Bidder's qualifications and financial status and to withhold formal signing of the contract until such information is received.

9. ACCEPTANCE OR REJECTION OF BIDS

The Park District may accept the bid of, and award the contract for the Work to, the lowest responsive and responsible Bidder as determined by and in the sole discretion of the Park District.

The Owner reserves the right to (1) reject all bids; (2) reject only certain bids which are non-conforming or non-responsive to the bid requirements; (3) accept only a portion, part or specific items of Work of all and reject others, as the Owner shall in its sole discretion determine to be in its best interest; and/or (4) award the Contract to the responsible Bidder submitting the lowest bid responsive to the bidding requirements. No bid will be accepted from or Contract awarded to any person, firm or corporation that is in arrears or is in default to the Park District upon any debt or contract,

or that is a defaulter, as surety or otherwise, upon any obligation to said Park District or that has failed to perform faithfully any previous contract with the Park District.

In the event of a rejection of a portion, part, or certain items of Work of all bids, the bid of each Bidder shall automatically be deemed reduced by the amount of such rejected part or item at the unit price or other cost designated therefore by that Bidder on its submitted Contractor Bid Form. The successful Bidder so selected may not refuse to enter into a Contract with the Owner on the basis that the Owner awarded a Contract for less than all portions or items of the Work specified in the Bid Documents. The Homewood-Flossmoor Park District Board of Park Commissioners reserves the right to waive any technicalities or irregularities, and to disregard any informality on the bids and bidding, when in its opinion the best interest of the Park District will be served by such actions and in accordance with applicable law.

10. SURETY

All bids must be accompanied by a bid bond or bank cashier's check payable to the Homewood-Flossmoor Park District for ten percent (10%) of the amount of the bid and drawn on a responsive and responsible bank doing business in the United States. All bids not accompanied by a bid security, when required, will be rejected.

The bid security of all except the three (3) lowest responsive and responsible Bidders will be returned after the decision to accept or reject bids by the Homewood-Flossmoor Park District Board of Park Commissioners. The bid security of the three (3) lowest responsive and responsible Bidders will be returned after acceptance by the Park District of an acceptable Performance Bond, Labor and Materials/Payment Bond and a certificate of insurance naming the Homewood-Flossmoor Park District as the certificate holder and as additional insured from successful Bidder, and the successful Bidder has executed and returned to the Park District the Contract for the Work presented by the Park District.

Prior to beginning Work, the successful Bidder shall furnish a Performance Bond, and Labor and Materials/Payment Bond in the amount of 110% of the Contract Sum, using a form similar to the AIA-A312-2010 form, or its current equivalent, or one acceptable to Owner, cosigned by a surety company licensed to conduct business in the State of Illinois and with at least an "A" rating and a financial rating of at least "X" in the latest edition of the Best Insurance Guide. Said bond shall guarantee the faithful performance of the Work in accordance with the Contract, the payment of all indebtedness incurred for labor and materials, and guarantee correction of Work. The cost of each bond shall be included in the Contract Sum. The Bidder and all Subcontractors shall name the Park District as an obligee on all bonds. Said bonds shall meet the requirements of the Illinois Public Construction Bond Act, 30 ILCS 550/0.01 et seq. and any further amendments thereto. Bidder shall include in its Performance Bond and Labor and Material Payment Bond such language as shall guarantee the faithful performance of the Prevailing Wage Act as required in these Bid Documents.

The Performance Bond and Labor and Material Payment Bond will become a part of the Contract. The failure of the successful Bidder to enter into the Contract and supply the required bonds and evidence of insurance within ten (10) days after the Contract is presented for signature, or within such extended period as the Park District may grant, shall constitute a default, and the Park District may either award the Contract to the next responsible Bidder, or re-advertise for bids. In the event of a default, the Owner need not return the defaulting Bidder's bid surety and may charge against the defaulting Bidder for the full difference between the amount for the bid and the amount for which a Contract for the Work is subsequently executed, irrespective of whether the amount thus due exceeds the amount of the defaulting Bidder's bid surety, provided that the District's retention of the bid guarantee shall not preclude the District from holding the Bidder fully liable for any and all damages which are in excess of said partial liquidated damages, and which shall otherwise be incurred by the District, including reasonable attorneys' fees, arising from the Bidder's failure to enter into said Contract and to deliver the same back to the District within said ten (10) day period.

11. AWARD OF CONTRACT

Owner will award the Contract to the lowest most responsible and responsive Bidder, as determined by Owner. In considering the Bidder's responsibility, the Owner may evaluate, among other factors, the ability of the Bidder to provide experienced labor sufficient in numbers to timely and properly complete the services, conformity with the Specifications, serviceability, quality, and the financial capability of the Bidder, and the performance of the Bidder on other projects.

The Owner shall have the right to accept Alternates in any order or combination, and to determine the low Bidder on the basis of the sum of the Base Bid and Alternates accepted. Bids will be awarded to one Bidder for the entire Project or to any combination of Bidders for any portion(s) of the Project.

The acceptance of a bid will be by a Notice of Award, signed by a duly authorized representative of the Park District; no other act by the Park District shall constitute the acceptance of a bid. The acceptance of a bid by the Park District shall bind the successful Bidder to execute and perform the Work of the Contract. The successful Bidder to whom the Contract is awarded by the Park District shall sign and deliver to the Park District for execution by the Park District all required copies of the Contract, along with all required insurance and surety documents within ten (10) days after presentation to him of the Contract for signature. In case the Bidder shall fail or neglect to do so, he will be considered

as having abandoned the Contract, and as being in default to the Owner. The Owner may thereupon re-advertise or otherwise award said Contract and forfeit the Bid Security.

The Advertisement for Bids, Instructions to Bidders, General Conditions, Special Conditions, if any, Drawings, Specifications, Contractor Bid Form, Addenda, if any, and the Contractors Compliance and Certifications Attachment, comprise the Bid Documents. The Bid Documents, together with, the Agreement for Purchase and Installation of Playground Equipment, substantially in the same form included in these Bid Documents, and proof of insurance comprise the Contract Documents.

END OF SECTION 001000

The use of brand names in these Specifications are used for the purpose of establishing a grade or quality. Bidders proposing to use an alternate that is equal to or superior to in every respect the product or material required by these Specifications must request approval in writing to the Park District at least seven (7) business days prior to the bid opening in accordance with the Section 6 of the Instruction to Bidders.

Heritage Park
Homewood, IL
OPTION 1
PLAYSENSE

<u>QTY.</u>	<u>NO.</u>	<u>DESCRIPTION</u>
		2 to 5 Play Area
1	176129A	PlaySense Design 33 EZ DB - Landscape Structures, Inc WIRE BARRIER W/ STEERING WHEEL DOUBLE POLY SLIDE BELT BRIDGE ABC CLIMBER SLIDEWINDER2 MINI SUMMIT CLIMBER WIRE BARRIER W/ MONKEY PANEL TURNING BAR WIRE BARRIER W/ MAZE PANEL
1	182503A	Welcome Sign (LSI Provided) Ages 2-5 years Direct Bury

ALSO

1	201548A	Blender Spinner Steel Posts and DB Only1
1	201552A	Gyro Twister Spinner Add-On DB Only1
1	194663A	ZipKrooz 34' w/Aluminum Posts DB1

**CONDITIONS OF THE CONTRACT
HOMewood-FLOSSMOOR PARK DISTRICT**

**NUTOYS PLAYSENSE COMPONENT SYSTEM OR EQUAL and INSTALLATION at
HERITAGE PARK**

Riegel Road and Idlewild Lane, Homewood, Illinois

GENERAL CONDITIONS

The General Conditions are included in the Agreement for Purchase and Installation of Playground Equipment, substantially in the same form included in these Bid Documents (the "General Conditions").

SUPPLEMENTARY CONDITIONS

The General Conditions are hereby amended to include the following:

1. COMPLETION DATE

The Contractor shall achieve Final Completion of the Work on or before September 15, 2023, subject to equipment availability. The Final Completion date may be extended by agreement of the Parties.

2. USE OF THE SITES

The 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 Owner and shall not unreasonably encumber the site with such materials. The site shall not be utilized for the storage of vehicles, materials, equipment, or fixtures not intended for the Work to be performed.

3. COOPERATION WITH UTILITIES

The 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, etc. 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.

It is understood and agreed that the Contractor has considered in its bid all of the permanent and temporary utility appurtenances in their present or relocated positions and that no additional compensation will be allowed for delays, inconvenience, or damage sustained by the Contractor, due to any interference from the said utility appurtenances or the operation of moving them either by the utility company or by the Contractor, or on account of any special construction methods required in performing the Work due to the existence of said appurtenances whether in their present or relocated positions.

4. PROTECTION OF PROPERTY -SAFETY RESPONSIBILITY

In accordance with the Specifications, the Contractor shall protect all existing property and improvements within the Project site and those adjacent to the Owner's property in a manner agreed upon between the Owner and Contractor. The Contractor shall be responsible for the repair cost of any damage created by its operations or the operations of any subcontractors.

Contractor shall comply with State and Federal regulations as outlined in the latest revision of the Federal Construction Safety Standards and with applicable provisions and regulations of Occupation Safety and Health Administration (OSHA), Standards of the William-Steiger Occupational Health and Safety Act of 1970 (revised). The Contractor and Owner shall each be responsible for their respective agents and employees.

The Contractor shall be obligated to indemnify, hold harmless and protect the Owner, its officers, employees and agents, from any actions or suits instituted as a direct or indirect result of any injury or damage consequent upon any failure to use or misuse by the Contractor, its agents and employees and any subcontractor, its agents and employees, of any ladder, support or other mechanical contrivance erected or constructed by any person or any or all kinds of equipment whether or not owned by or furnished by the Owner.

5. INSURANCE

BIDDER'S ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW. IT IS HIGHLY RECOMMENDED THAT THE BIDDER CONFER WITH ITS INSURANCE CARRIER REGARDING THESE REQUIREMENTS. FAILURE TO MEET THESE REQUIREMENTS IS CAUSE FOR CANCELLATION OF THE CONTRACT.

The successful Bidder shall obtain insurance of the types and in the amounts listed below.

a. Commercial General and Umbrella Liability Insurance

The successful Bidder 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 00 01 04 13, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, 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 District, its elected and appointed officials, employees, agents and volunteers shall be included as an additional named insured under the CGL, using ISO additional insured endorsement CG 20 26 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 District. Any insurance or self-insurance maintained by the District shall be deemed excess of such bidder's insurance and shall not contribute with it.

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 Substantial 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

The successful Bidder 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

The successful Bidder shall maintain workers compensation 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.

Such Bidder waives all rights against District and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to such Bidder's activities.

e. General Insurance Provisions

i. Evidence of Insurance: The successful Bidder shall furnish the 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 District prior to the cancellation or material change of any insurance referred to therein. Written notice to the District shall be by certified mail, return receipt requested.

Failure of the District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements, or failure of the District to identify a coverage deficiency from evidence that is provided, shall not be construed as a waiver of such Bidder's obligation to maintain such insurance.

The District shall have the right, but not the obligation, of prohibiting such Bidder from entering the premises until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by District.

Failure to maintain the required insurance may result in termination of the Contract entered by the parties at the District's option.

With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to the District upon request.

Such Bidder shall provide certified copies of all insurance policies required above within 10 days of the District's written request for said copies.

ii. Acceptability of Insurers: All insurance companies shall maintain a rating no less than A-VII from A.M. Best, based on 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 District has the right to reject insurance written by an insurer it deems unacceptable.

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

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

f. Subcontractors

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

6. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner 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 the Contractor's 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 therefrom and (ii) is caused in whole or in part by any wrongful or negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. 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 and hold and save harmless the Owner, 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 the Contract.

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 successful Bidder'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.

The successful Bidder's indemnification of the District shall survive the termination or expiration of the Contract.

7. **WARRANTY**

The Work performed and the materials and equipment installed under this Contract shall be in compliance with the Contract Documents and must be guaranteed by the Contractor for a period of twelve (12) months from Final Completion or for the period(s) set forth in the scope of work/Specifications, whichever is longer, against defective workmanship and material of any nature. On all material or equipment incorporated, the Contractor and its Surety must guarantee that the type, quality, design and performance will fully meet the requirements of the Specifications and Drawings. Neither final payment nor termination of the guarantee period, nor any provision in the Contract Documents shall relieve the Contractor of the responsibility for negligence, faulty materials, or workmanship within the extent and period provided by law, and upon written notice he/she shall remedy any defects due thereto, and shall pay all expenses for any damage to other work resulting therefrom.

The Contractor shall provide the Owner with manufacturer's warranties for all materials and equipment installed under the Contract. The warranty for the playground equipment and its components shall be for a period indicated in the Specifications, or such longer period as provided by the manufacturer's warranty or in accordance with applicable law. The warranty provided in this section is in addition to all other warranties provided by the Contract Documents or provided in accordance with applicable law.

8. **COMPLETION OF WORK**

All Work, as either implied or reasonably inferable from the Contract Documents and Specifications shall be the responsibility of the Contractor. All Specifications are directed to the attention of the Contractor and the inclusion of any work by mention, note, detail,

itemization or implication, however brief, means that the Contractor shall provide and install same. All Work performed shall include all appurtenances and apparatus normally deemed to be a part of a completed package within the definitions of normal industry standards.

9. **SUPERVISION**

The Contractor is to provide a full-time superintendent on the Project to coordinate all subcontractors' work and supervise the daily activity of the Project as well as maintain the site in a safe clean manner.

10. **SITE CONDITIONS**

All Contractors' work shall be performed in a first-class, workmanlike manner, cutting, patching, matching and aligning all surfaces where applicable to afford a finished neat appearance. Contractor shall clean all surfaces free of dirt and refuse caused by debris from all installation techniques of the trade. All adjacent surfaces to their work shall be left as they appear prior to the commencement of the Contractor's work to be done. Contractor shall properly protect all adjacent surfaces during the course of this installation.

11. **OWNER INSPECTION**

The District's representative shall have access to the site at all times and to the factory or shop of any of the subcontractors. Any inferior material or workmanship shall be removed upon demand and work shall be reconstructed as approved by the Owner at the Contractor's sole expense.

12. **OTHER CONTRACTS**

The Owner reserves the right to let other contracts in connection with the Work of the Project. The Contractor shall be responsible for coordination of work and establishing schedules for all trades; and shall afford other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work.

13. **CHANGES TO THE WORK**

The District reserves the right to make changes as the work progresses. Bulletins, change orders, Drawings, Specifications or instructions covering such changes will be issued to the Contractor, whose responsibility it will be to distribute these immediately and to notify the field office and all subcontractors affected to take such measures as may be necessary to avoid errors in the Work which may occur due to the use of superseded Drawings. Work affected by changes proposed in any revised Drawings or other documents issued to the Contractor shall not be executed unless changes are accompanied by letter of authorization from the District to proceed accordingly. In cases where instructions accompanying any issue of revised Drawings or Specifications request estimates of cost involved, such

estimates shall be prepared and submitted promptly in order not to unduly affect the progress of the Work.

14. **SHOP DRAWINGS**

Contractor shall submit all shop drawings for approval to the Owner prior to commencement of Work. Shop drawing submittals shall be in the form of (5) black and white prints of each drawings; (5) catalog cut sheets; and (1) PDF file as applicable. Approval of a shop drawing(s) shall indicate only that such drawings generally express the intent of the Contract Documents and shall neither be construed as a complete check nor relieve the Contractor of responsibility for quantities and dimensions, or full performance of the Work. All Contractors shall submit cuts, samples and finishes for written approval prior to ordering of fabrication. A tentative shop drawing submittal schedule with proposed review dates is requested from the Contractor.

SPECIAL CONDITIONS

1. Unless expressly agreed otherwise by the District, Heritage Park shall remain open to the public for the duration of the Project. As such, Contractor shall maintain the Project site in a manner that ensures safe access to park amenities by the public, Park District staff and others requiring access to the parks. 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.

**BID FORM
HOMEWOOD-FLOSSMOOR PARK DISTRICT**

**NuToys Playsense Component System or Equal and Installation at Heritage Park
Riegel Road and Idlewild Lane, Homewood, Illinois**

(Please complete in ink, and print or type)

TO: Homewood-Flossmoor Park District
3301 Flossmoor Road
Flossmoor, Illinois 60422

FROM:

NAME OF BIDDER

STREET ADDRESS

CITY

STATE

ZIP

PHONE

EMAIL ADDRESS

FOR: NuToys Playsense Component System or Equal and Installation at Heritage Park

By submission of its bid, the Bidder acknowledges, agrees, represents, declares and warrants:

- A. That Bidder has carefully examined the written Specifications and Drawings and is thoroughly familiar therewith, and that Bidder has visited the site of the proposed Work to arrive at a clear understanding of the conditions under which the Work is to be done, and that Bidder has compared the site with the Drawings and Specifications and has satisfied itself as to all conditions affecting the execution of the Work;
- B. That all modifications have been submitted with this bid;
- C. That Bidder has checked carefully the bid figures and understands that Bidder shall be responsible for any errors or omissions based on these Specifications and alternates as submitted on the Bid Proposal Form;
- D. That it is understood and agreed that the Homewood-Flossmoor Park District reserves the right to accept or reject any or all bids, or to combine or separate any section or work, and to waive any technicalities;
- E. To hold the bid open for sixty (60) days subsequent to the date of the bid opening;
- F. To enter into and execute a Contract with the Owner within ten (10) days after the date of the Notice of Award, if awarded on the basis of this bid, and in connection therewith to:
 - (a) Furnish all bonds and insurance required by the Contract Documents;
 - (b) Accomplish the Work in accordance with the Contract Documents; and

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- (c) Complete the Work within the time requirements as set forth in the Bid Documents.
- G. That if this bid is accepted, the Bidder is to provide all of the necessary equipment, tools, apparatus, labor, and other means of construction, and to do all of the Work and to furnish all of the materials specified in the Bid Documents in the manner and at the time therein prescribed, and in accordance with the requirements set forth;
- H. To commence Work as specified in the Instructions to Bidders, and to prosecute the Work in such a manner, and with sufficient materials, equipment and labor as will ensure its completion within reasonable time, it being understood and agreed that the completion within such reasonable time is an essential part of this Contract;
- I. That any and all prices stated in the proposal include all costs of labor, materials, equipment, insurance, bonds, overhead and profit, and any and all other costs normal to doing business.

The undersigned Bidder agrees to perform the Work for the following lump sum price:

Base Bid	Amount
NuToys Playsense Component System or Approved Equal and Installation at Heritage Park	\$

Bids will be awarded to one Bidder for the entire Project.

The undersigned Bidder hereby acknowledges the receipt of the following addenda (if any) distributed by the Park District.

Addendum No. _____ Date: _____
 Addendum No. _____ Date: _____

Contractor shall achieve Final Completion of the Work on or before September 15, 2023, subject to equipment availability. The Final Completion date may be extended by agreement of the Parties.

The undersigned Bidder agrees that if this bid is accepted by the Park District, it will perform all Work in accordance with the requirements of the Contract.

DATED THIS _____ DAY OF _____, 2023.

 Full Name of Bidder (Print) (a) Individual ()
 (b) Partnership ()
 (c) Corporation ()

Name and Title of Authorized Agent
 if Corporation or Partnership (Print): _____

 Full Name and Title of Bidder (Signature)

 Street Address/City/State/Zip

Email _____ Phone _____

LIST OF SUBCONTRACTORS

Bidder submits a list of subcontractors for each trade relative to the Work to be performed under the Contract with the District, and agrees that if selected the successful Contractor, the Bidder will promptly confer with the District's agents on the question of which subcontractors the Bidder proposes to use, including submission of their qualifications. It is agreed that the District may substitute for any proposed subcontractor, another subcontractor for the trade against whose standing and ability the Bidder makes no objection in writing, and the Bidder will use all such finally selected subcontractors at the amount named in their respective subcontracts, and be in every way responsible for them and their work as if they had been originally named in the Bidder's bid, the unit, total and alternate Contract prices being adjusted to confirm thereto.

Subcontractor Name & Address Classification of Work Amount of Subcontract

1.		
2.		
3.		
4.		

CONTRACTOR COMPLIANCE AND CERTIFICATIONS ATTACHMENT

Note: The following certifications form an integral part of the Agreement between the Owner and Contractor. Breach by Contractor of any of the certifications may result in immediate termination of the Contractor's services by Owner.

THE UNDERSIGNED CONTRACTOR HEREBY ACKNOWLEDGES, CERTIFIES, AFFIRMS AND AGREES AS FOLLOWS:

- A. Contractor has carefully read and understands the contents, purpose and legal effect of this document as stated above and hereafter in this document. The certifications contained herein are true, complete and correct in all respects.
- B. Contractor shall abide by and comply with, and in contracts which it has with all persons providing any of the services or Work on this Project on its behalf shall require compliance with, all applicable Federal, State and local laws and rules and regulations including without limitation those relating to 1) fair employment practices, affirmative action and prohibiting discrimination in employment; 2) workers' compensation; 3) workplace safety; 4) wages and claims of laborers, mechanics and other workers, agents, or servants in any manner employed in connection with contracts involving public funds or the development or construction of public works, buildings or facilities; and 5) steel products procurement.
- C. All contracts for this Project are subject to the provisions of the Illinois Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*), providing for the payment of the prevailing rate of wage to all laborers, workmen and mechanics engaged in the Work. Contractor shall pay prevailing rates of wages in accordance with the Illinois Department of Labor's wage determination and any subsequent determinations issued by the Illinois Department of Labor, all in accordance with applicable law. These revisions may be accessed by computer at <http://labor.illinois.gov/>. Contractor is responsible for determining the applicable prevailing wage rates at the time of bid submission and at the time of performance of the Work. Failure of Contractor to make such determination shall not relieve it of its obligations in accordance with the Contract Documents. Contractor shall also comply with all other requirements of the Act including without limitation those pertaining to inclusion of required language in subcontracts, job site posting, maintenance and submission of certified payroll records and inspection of records. Contractor is not barred from entering into public contracts under Section 11a of the Illinois Prevailing Wage Act due to its having been found to have disregarded its obligations under the Act.
- D. To the best of Contractor's knowledge, no officer or employee of Contractor has been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois, or any unit of local government, nor has any officer or employee made an admission of guilt of such conduct which is a matter of record.
- E. Contractor is not barred from bidding on or entering into public contracts due to having been convicted of bid-rigging or bid rotating under paragraphs 33E-3 or 33E-4 of the Illinois Criminal Code. Contractor also certifies that no officers or employees of the Contractor have been so convicted and that Contractor is not the successor company or a new company created by the officers or owners of one so convicted. Contractor further certifies that any such conviction occurring after the date of this certification will be reported to the Owner, immediately in writing, if it occurs during the bidding process, or otherwise prior to entering into the Contract therewith.

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- F. Pursuant to the Illinois Human Rights Act (775 ILCS 5/2-105), Contractor has a written sexual harassment policy that includes, at a minimum, the following information: (i) a statement on the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment utilizing examples; (iv) the Contractor's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and directions on how to contact both; and (vi) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act. Contractor further certifies that such policy shall remain in full force and effect. A copy of the policy shall be provided to the Illinois Department of Human Rights upon request.
- G. (i) Contractor's bid proposal was made without any connection or common interest in the profits anticipated to be derived from the Contract by Contractor with any other persons submitting any bid or proposal for the Contract; (ii) the Contract terms are in all respects fair and the Contract will be entered into by Contractor without collusion or fraud; (iii) no official, officer or employee of the Owner has any direct or indirect financial interest in Contractor's bid proposal or in Contractor, (iv) the Contractor has not directly or indirectly provided, and shall not directly or indirectly provide, funds or other consideration to any person or entity (including, but not limited to, the Owner and the Owner's employees and agents), to procure improperly special or unusual treatment with respect to this Agreement or for the purpose of otherwise improperly influencing the relationship between the Owner and the Contractor. Additionally, the Contractor shall cause all of its officers, directors, employees, (as the case may be) to comply with the restrictions contained in the preceding sentence.
- H. Contractor knows and understands the Equal Employment Opportunity Clause administered by the Illinois Department of Human Rights, which is incorporated herein by this reference, and agrees to comply with the provisions thereof. Contractor further certifies that Contractor is an "equal opportunity employer" as defined by Section 2000 (e) of Chapter 21, Title 42 of the United States Code Annotated and Executive Orders #11246 and #11375 as amended, which are incorporated herein by this reference.
- I. Neither Contractor nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated under that Act.
- J. Contractor is not barred from contracting with the Owner because of any delinquency in the payment of any tax administered by the Illinois Department of Revenue, unless it is being contested. Contractor further certifies that it understands that making a false statement regarding delinquency in taxes is a Class A misdemeanor and, in addition, voids the Contract and allows the Owner, a municipal entity, to recover in a civil action all amounts paid to the Contractor.
- K. If Contractor has 25 or more employees at the time of letting of the Contract, Contractor knows, understands and acknowledges its obligations under the Illinois Drug Free Workplace Act (30 ILCS 580/1 *et seq.*) and certifies that it will provide a drug-free workplace by taking the actions required under, and otherwise implementing on a continuing basis, Section 3 of the Drug Free Workplace Act. Contractor further certifies that it has not been debarred and is not ineligible for award of this Contract as the result of a violation of the Illinois Drug Free Workplace Act.
- L. Contractor knows, understands and acknowledges its obligations under the Substance Abuse Prevention on Public Works Act, 820 ILCS 265/1 *et seq.* A true and complete copy of Contractor's

SUBSTANCE ABUSE PREVENTION PROGRAM CERTIFICATION

The Substance Abuse Prevention on Public Works Projects Act, 820 ILCS 265/1 et seq., (“Act”) prohibits any employee of the Contractor or any Subcontractor on a public works project to use, possess or be under the influence of a drug or alcohol, as those terms are defined in the Act, while performing work on the Project. The Contractor/Subcontractor [circle one], by its undersigned representative, hereby certifies and represents to the Homewood-Flossmoor Park District that **[Contractor/Subcontractor must complete either Part A or Part B below]:**

A. The Contractor/Subcontractor [circle one] has in place for all of its employees not covered by a collective bargaining agreement that deals with the subject of the Act a written substance abuse prevention program, a true and correct copy of which is attached to this certification, which meets or exceeds the requirements of the Substance Abuse Prevention on Public Works Act, 820 ILCS 265/1 et seq. **[Contractor/Subcontractor must attach a copy of its substance abuse prevention program to this Certification.]**

Name of Contractor/Subcontractor (print or type)

Name and Title of Authorized Representative (print or type)

Signature of Authorized Representative

_____ Dated: _____

B. The Contractor/Subcontractor [circle one] has one or more collective bargaining agreements in effect for all of its employees that deal with the subject matter of the Substance Abuse Prevention on Public Works Projects Act, 820 ILCS 265/1 et seq.

Name of Contractor/Subcontractor (print or type)

Name and Title of Authorized Representative (print or type)

Signature of Authorized Representative

_____ Dated: _____

IMPORTANT NOTICE OF RESPONSIBILITY FOR PERIODIC REVISIONS TO PREVAILING WAGE RATES

Revisions of the Prevailing Wage Rates are made periodically by the Illinois Department of Labor (IDOL). As required by the Illinois Prevailing Wage Act, the contractor/subcontractor has an obligation to check IDOL's web site for revisions to prevailing wage rates. These revisions may be accessed by computer at <http://labor.illinois.gov/>. Bidders and contractors performing work on this Project are responsible for determining the applicable prevailing wage rates at the time of bid submission and performance of the Work. Failure of a bidder/contractor to make such determination shall not relieve it of its obligations in accordance with the Contract Documents. In consideration for the award to it of the contract for this Project, the contractor agrees that the foregoing notice satisfies any obligation of the public body in charge of this Project to notify the contractor of periodic changes in the prevailing wage rates and the contractor agrees to assume and be solely responsible for, as a material obligation of the contractor under the contract, the obligation to determine periodic revisions of the prevailing wage rates, to notify its subcontractors of such revisions, to post such revisions as required for the posting of wage rates under the Act, and to pay and require its subcontractors to pay wages in accordance with such revised rates.

**AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR THE
PURCHASE AND INSTALLATION OF PLAYGROUND EQUIPMENT**

This Agreement between and Owner and Contractor for the Purchase and Installation of Playground Equipment (the "Agreement") is made as of the ____ day of _____, 2023 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 _____. 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: supply and install the playground equipment at the Park District's Heritage Park, and all other improvements as indicated in the Park District's Bid Documents for NuToys Playsense Component System or Equal and Installation, dated May 12, 2023 (the "Work"), attached to and incorporated as part of this Agreement by reference ("Bid Documents").

2. Contract Documents. The Contract Documents consist of this Agreement between the Park District and the Contractor, the Bid 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**, Contractor's Performance Bond and Payment Bond, attached to and incorporated as part of this Agreement as **Exhibit C**, and any modifications issued after the execution of this Agreement. All of the terms, conditions and specifications contained in the Bid 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 Dates. Contractor shall achieve Final Completion of the Work on or before September 15, 2023, subject to equipment availability. The Final Completion date may be extended by agreement

of the Parties pursuant to the General Conditions. 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 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 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: _____ (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. 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. 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.

d. 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. Title and Risk of Loss. Contractor shall not grant rights in or to, or otherwise encumber the Work, including but not limited to the playground equipment, or any parts thereof, provided as part of the Work, to, in or by any third parties at any time, that would impair or delay the full exercise by Park District of any of its rights or remedies under the Agreement. Clean and unencumbered title to the Work shall be transferred to the Park District upon acceptance of the Work by the Park District. Title to, and the risk of loss, injury or destruction from any casualty to the Work, regardless of cause, will be the responsibility of the Contractor until the Work has been received, inspected and accepted by the Park District.

13. 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.

The warranty for the playground equipment and its components shall commence upon Final Completion and shall be for the period set forth in the Specifications, or such longer period as provided by the manufacturer's warranty or in accordance with applicable law. The warranty provided in this section is in addition to all other warranties provided by the Contract Documents or provided in accordance with applicable law.

14. Correction of the Work. In addition to the Contractor's obligations under Section 13, 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 13, 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 14 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.

15. 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.

16. 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. 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.

17. Insurance.

Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Work. The cost of such insurance shall be borne by the Contractor.

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 00 01 04 13, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, 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, agents and volunteers shall be included as an additional named insured under the CGL, using ISO additional insured endorsement CG 20 26 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 deemed excess of Contractor's insurance and shall not contribute with it.

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 Substantial 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 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.

Contractor waives all rights against the Park District and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to Contractor's activities.

e. **General Insurance Provisions**

i. **Evidence of Insurance:** Contractor shall furnish 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 coverage deficiency from evidence that is provided, shall not be construed as a waiver of such Contractor's obligation to maintain such insurance.

The Park District shall have the right, but not the obligation, of prohibiting the Contractor from entering the premises 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 the Contract entered by the Parties at the Park District's option.

With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to the Park District upon request.

Contractor shall provide certified copies of all insurance policies required above within 10 days of the Park District's written request for said copies.

ii. **Acceptability of Insurers:** All insurance companies shall maintain a rating no less than A-VII from A.M. Best, based on 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.

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

iv. 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 Contractor may be required to procure a bond guaranteeing payment of losses and other related costs, including, but not limited to, investigations, claims administration and defense expenses.

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

18. 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. 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 Park 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 Park District's participation in its defense shall not remove the Contractor's duty to indemnify, defend and hold the Park 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.

19. Performance, Payment and Maintenance Bonds.

a. Contractor shall deposit with the Park District before commencing any work an *AIA A312-2010 Performance Bond and Payment Bond*, or an approved substitute, for 110% of the Contract Sum, guaranteeing the faithful performance of the Work in accordance with the Contract Documents, the payment of all indebtedness incurred for labor and materials, payment of the prevailing wage, and guarantee correction of Work.

The surety must be approved by the Park District and be licensed to conduct business in the State of Illinois and be named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury. The payment and performance bonds shall strictly comply with the Public Construction Bond Act, 30 ILCS 550/0.01, *et seq.* and this section. Contractor and all subcontractors shall name the Park District as an obligee on all bonds.

b. Whenever Contractor shall be and is declared by the Park District to be in default under the Agreement, the surety and the Contractor are each responsible to make full payment to the Park District for any and all extra work incurred by the Park District as a result of the Contractor's default and to pay to the Park District all attorneys' fees and court costs incurred by the Park District as a result of the Contractor's default, and in protecting the Park District's rights under the Contract Documents to remedy the Contractor's default.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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 Road
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.

30. 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.

31. 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.

32. 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:
