

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
MICHIGAN RECREATIONAL CONSTRUCTION, INC.**

AND THE CITY OF ANN ARBOR

FOR PLAYGROUND IMPROVEMENT SERVICES

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E. Huron St. Ann Arbor, Michigan 48103 ("City"), and Michigan Recreational Construction ("Contractor") a Michigan Corporation with its address at 1091 Victory Drive, Howell, MI 48843 agree as follows on this 6th day of March, 2015.

The Contractor agrees to provide services to the City under the following terms and conditions:

I. DEFINITIONS

Administering Service Area/Unit means Community Services Area.

Contract Administrator means Community Services Administrator, acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit.

Deliverables means all Plans, Specifications, Reports, Recommendations, and other materials developed for and delivered to City by Contractor under this Agreement

Project means Playground Improvement Services.
Project Name

Work Statement means a request for specific services or deliverables by the City, a proposal of Consultant, or another written instrument that meets the following requirements:

1. Includes substantially the following statement: "This is a Work Statement under Consultant Services Agreement Dated"
2. Is signed on behalf of both parties by their authorized representatives. The required signatures for the City are: (a) City Administrator; (b) Administrator of the Administering Service Area/Unit approved as to substance; and (c) City Attorney approved as to form and content.
3. Contains the following three mandatory items:
 - a. Description and/or specifications of the services to be performed and the Deliverables to be delivered to City
 - b. The amount of payment
 - c. The time schedule for performance and for delivery of the Deliverables

V. COMPENSATION OF CONTRACTOR

- A. The Contractor shall be paid in the manner set forth in Exhibit B or in signed Work Statement(s) as may be agreed upon from time to time. Payment shall be made monthly, unless another payment term is specified in Exhibit B or the applicable Work Statement, following receipt of invoices submitted by the Contractor, and approved by the Contract Administrator.
- B. The Contractor will be compensated for Services performed in addition to the Services described in Section III, only when the scope of and compensation for those additional Services have received prior written approval of the Contract Administrator.
- C. The Contractor shall keep complete records of work performed (e.g. tasks performed/hours allocated) so that the City may verify invoices submitted by the Contractor. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

VI. INSURANCE/INDEMNIFICATION

- A. The Contractor shall procure and maintain during the life of this contract such insurance policies, including those set forth in Exhibit C, as will protect itself and the City from all claims for bodily injuries, death or property damage which may arise under this contract; whether the act(s) or omission(s) giving rise to the claim were made by the Contractor, any subcontractor or anyone employed by them directly or indirectly. In the case of all contracts involving on-site work, the Contractor shall provide to the City, before the commencement of any work under this contract, documentation satisfactory to the City demonstrating it has obtained the policies and endorsements required by Exhibit C.
- B. Any insurance provider of Contractor shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.
- C. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses, including attorney's fees, resulting or alleged to result, from any acts or omissions by Contractor or its employees and agents occurring in the performance of or breach in this Agreement, except to the extent that any suit, claim, judgment or expense are finally judicially determined to have resulted from the City's negligence or willful misconduct or its failure to comply with any of its material obligations set forth in this Agreement.

IX. OBLIGATIONS OF THE CITY

- A. The City agrees to give the Contractor access to the Project area and other City-owned properties as required to perform the necessary Services under this Agreement.
- B. The City shall notify the Contractor of any defects in the Services of which the Contract Administrator has actual notice.

X. ASSIGNMENT

- A. The Contractor shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the City. Notwithstanding any consent by the City to any assignment, Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City.
- B. The Contractor shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

XI. TERMINATION OF AGREEMENT

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice. The waiver of any breach by any party to this Agreement shall not waive any subsequent breach by any party.
- B. The City may terminate this Agreement, on at least thirty (30) days advance notice, for any reason, including convenience, without incurring any penalty, expense or liability to Contractor, except the obligation to pay for Services actually performed under the Agreement before the termination date.
- C. Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, the City shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The Contract Administrator shall give Contractor written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.
- D. The provisions of Articles VI and VIII shall survive the expiration or earlier termination of this Agreement for any reason. The expiration or termination of this Agreement, for any reason, shall not release either party from any obligation

If Notice is sent to the CITY, it shall be addressed and sent to:

City of Ann Arbor
Sumedh Bahl, Community Services Area Administrator
301 E. Huron St.
Ann Arbor, Michigan 48103

XIV. CHOICE OF LAW AND FORUM

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction, excepting the principles of conflicts of law. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

XV. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this Agreement, all documents (i.e., Deliverables) prepared by or obtained by the Contractor as provided under the terms of this Agreement shall be delivered to and become the property of the City. Original basic survey notes, sketches, charts, drawings, partially completed drawings, computations, quantities and other data shall remain in the possession of the Contractor as instruments of service unless specifically incorporated in a deliverable, but shall be made available, upon request, to the City without restriction or limitation on their use. The City acknowledges that the documents are prepared only for the Project. Prior to completion of the contracted Services the City shall have a recognized proprietary interest in the work product of the Contractor.

Unless otherwise stated in this Agreement, any intellectual property owned by Contractor prior to the effective date of this Agreement (i.e., Preexisting Information) shall remain the exclusive property of Contractor even if such Preexisting Information is embedded or otherwise incorporated in materials or products first produced as a result of this Agreement or used to develop Deliverables. The City's right under this provision shall not apply to any Preexisting Information or any component thereof regardless of form or media.

XV. CONFLICTS OF INTEREST OR REPRESENTATION


Contractor certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. Contractor further certifies that it

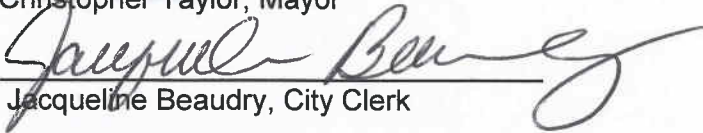
FOR CONTRACTOR
Michigan Recreational Construction, Inc

By 
Craig Sheffer

Its President

FOR THE CITY OF ANN ARBOR

By 
Christopher Taylor, Mayor

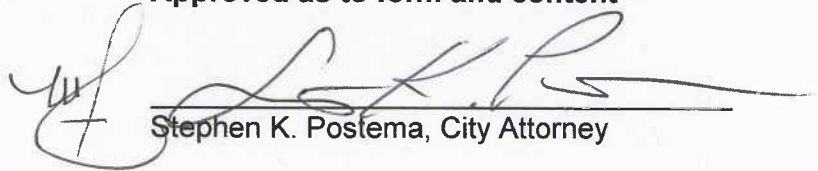
By 
Jacqueline Beaudry, City Clerk

Approved as to substance


Steven D. Powers, City Administrator

 CS
SUMEDH BHAL Type Name
Service Area Administrator

Approved as to form and content


Stephen K. Postema, City Attorney

SECTION II SCOPE OF SERVICES

1. Objective

The City of Ann Arbor park system has nearly 80 playgrounds. The playgrounds range in age from 1986 to 2014, and contain multiple brands of playground equipment. The goal of this RFP is to have a company specializing in playground construction and oversight to assist the City of Ann Arbor, Parks and Recreation Services, in evaluation of existing playgrounds, construction of new playgrounds, renovation and maintenance of existing playgrounds. The services desired include, but are not limited to, playground safety inspections, minor repairs to playgrounds, major renovations of playgrounds, and installation of new playground equipment and associated amenities.

Selected firms will be asked to submit proposals specific to each project. Firms will be chosen based on how closely their expertise fits with the particular projects, their proposed work plan and fees.

2. Description

General services to be provided may include, but not limited to any of the following:

- A. Perform playground safety inspections as needed. Prepare inspection reports detailing non-compliant items, priorities and recommendations for repair.
- B. Perform repairs to playgrounds as needed to bring them into safety compliance, including but not limited to replacing hardware, decks, swings, and individual play events.
- C. Replace entire playground structures, including demolition of existing structures, and installation of new playground equipment.
- D. Work with playground manufacturers to purchase appropriate hardware and playground elements to assure the playgrounds are in compliance with safety guidelines.
- E. Install drainage for play area.
- F. Install playground edging, including timbers, concrete, or recycled plastic.
- G. Install playground safety surfacing, including engineered wood fiber, poured in place, tile, or other surfacing.
- H. Install new park furniture, including benches and picnic tables, small shade structures.

**EXHIBIT B
COMPENSATION**

General

Contractor shall be paid for those Services performed pursuant to this Agreement inclusive of all reimbursable expenses (if applicable), in accordance with the terms and conditions herein. The Compensation Schedule below/attached states nature and amount of compensation the Contractor may charge the City:

- 1) Provide cost estimates for the predetermined scope of work to include materials & labor.
- 2) MRC will provide back-up for our pricing upon request.
- 3) Upon City of Ann Arbor approval and receipt of work order, MRC will plan & execute the work per best construction practices and required time frame.
- 4) Changes in scope of work will always be addressed and approved prior to execution.
- 5) MRC will schedule a final walk-thru with the City of Ann Arbor upon completion and will provide any required close-out documents.

Pricing Proposal

The following pricing is a general guide for pricing. MRC prefers to price a project based on the actual scope of work. The reason for this is as the work quantity increases, the unit cost usually will go down and likewise, lesser quantities of work may cause the unit price to increase. MRC is committed to always looking for the most cost effective way to complete the required scope of work for the City of Ann Arbor.

- A. Per Labor and Tradesman Hour
 - 1. General Laborer: \$40.00 per hour
 - 2. Supervisor/Foreman: \$25.00 per hour
- B. Per Equipment Hour or Mile
 - 1. Skid Steer with Operator: \$90.00 per hour
 - 2. Mini Excavator with Operator: \$100.00 per hour
 - 3. Field Generator with Operator: \$80.00 per hour
 - 4. Utility Truck with Operator: \$65.00 per hour
 - 5. Trucking and Hauling with Operator: \$95.00 to \$135.00 per hour
 - 6. 3-yard Trucks to Gravel Trips

**EXHIBIT C
INSURANCE REQUIREMENTS**

Effective the date of this Agreement, and continuing without interruption during the term of this Agreement, Contractor shall provide certificates of insurance to the City on behalf of itself, and when requested any subcontractor(s). The certificates of insurance shall meet the following minimum requirements.

A. The Contractor shall have insurance that meets the following minimum requirements:

1. Professional Liability Insurance or Errors and Omissions Insurance protecting the Contractor and its employees in an amount not less than \$1,000,000.
2. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident
Bodily Injury by Disease - \$500,000 each employee
Bodily Injury by Disease - \$500,000 each policy limit

3. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements which diminish the City's protections as an additional insured under the policy. Further, the following minimum limits of liability are required:

\$1,000,000	Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined
\$2,000,000	Per Job General Aggregate
\$1,000,000	Personal and Advertising Injury

4. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97 or current equivalent. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements which diminish the City's protections as an additional insured under the policy. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.
5. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor

CONTRACT ROUTING FORM

****NOTE: CITY ATTORNEY MUST REVIEW CONTRACTS BEFORE SUBMISSION TO CITY COUNCIL**

SUBMITTED BY: Amy Kuras DATE: 3/9/15

DEPARTMENT: Parks & Recreation

CONTRACTOR: Michigan Recreational Construction

PURPOSE: Contract for continuing services for playground inspections, construction & consulting services

CONTRACT TYPE: SERVICES MATERIALS AND CONSTRUCTION

CONTRACT AMOUNT: \$150,000 / fiscal year

HUMAN RIGHTS APPROVAL DATE: NA

RESOLUTION REQUIRED: YES NO

RESOLUTION NO. R-15-064
PLEASE ATTACH

SIGNATURES: PLEASE MARK PAGES (IN ORDER)

	REQUIRED	SIGNED	DATE SIGNED
CONTRACTOR	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>5/15</u>
DEPARTMENT	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>5/18/15</u>
CITY ATTORNEY	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>5/27/15</u>
CITY ADMINISTRATOR	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>5/28/15</u>
MAYOR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
CITY CLERK	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<u>5/29/15</u>

RETURN CONTRACT TO: Amy Kuras PHONE: 42590