



**CHAMPAIGN
PARK DISTRICT**

**AGENDA
SPECIAL BOARD MEETING
BRESNAN MEETING CENTER
706 Kenwood Road
Champaign, Illinois**

Citizens may livestream or listen to the study session by accessing the following web address or phone number: <https://us02web.zoom.us/j/85889942842?pwd=TWdrNXUxS3NpbURPdmgrd2xpMHBVUT09>
Public comment is not available through online video or telephone. For those who are interested in sharing public comment, please join the meeting in-person at the address, time, and date listed above.

For online video access, please use the following Meeting ID and Password when prompted:
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Passcode: 955382

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**Wednesday, March 27, 2024
5:30 P.M.**

A. CALL TO ORDER

B. PRESENTATIONS

1. Distinguished Service Award – Andy Heaton, Josh Patton, Miguel Gaona, and Ryan Musgrove. [Link](#)

C. COMMENTS FROM THE PUBLIC: *(Comments must be limited to not more than three (3) minutes.)*

D. COMMUNICATIONS

E. TREASURER'S REPORT

1. Consideration of Acceptance of the Treasurer's Report for the Month of February 2024.

F. EXECUTIVE DIRECTOR'S REPORT

1. General Announcements

G. COMMITTEE AND LIAISON REPORTS

1. Champaign Parks Foundation

H. REPORT OF OFFICERS

1. Attorney's Report
2. President's Report

I. CONSENT AGENDA

All items appearing below are considered routine by the Board and shall be enacted by one motion. If discussion is desired, that item shall be removed and discussed separately.

1. Approval of Minutes of the Special Board Meeting, February 28, 2024. [Link](#)
2. Approval of Executive Session Minutes, February 28, 2024.
3. Approval of Bid for Playground Surfacing. [Link](#)

J. NEW BUSINESS

1. Approval of Disbursements
Staff recommends approval of disbursements for the period beginning February 15, 2024, and ending March 13, 2024. **(Roll Call Vote)**
2. Approval of Professional Services Agreement with GHR Engineering and Associates for the Fly System Rigging at the Virginia Theatre
Staff recommends that the Board accept the proposal and authorize the Executive Director to enter into the provided AIA agreement with GHR Engineers & Associates, Inc., of Champaign, IL, in the amount of \$54,000.00 to provide design and construction administration services for the Virginia Theatre rigging control system upgrade subject to legal counsel final review. [Link](#)
3. Approval of Bid for Concessions at Sholem Aquatic Center and Dodds Park Sports Complex
Staff recommend approval of a License Agreement with JMB Industries, Inc. to use Sholem Aquatic Center for the purpose of concessions food and beverage. [Link](#)
4. Approval of Purchase of Lighting Console for the Virginia Theatre
Staff recommends approval of accepting bid and authorize the Executive Director to purchase ETC ION APEX 20 Lighting Console and Peripherals for the Virginia Theatre from the low, responsible bidder, Full Compass Systems, Inc., Madison, WI, in the amount of \$78,782.00. [Link](#)
5. Approval of Location Partner Agreement with Tivity Health Services, LLC (Silver Sneakers)
Staff recommends approval of an amendment to the agreement with Tivity Health Services, LLC to add the Martens Center and Sholem Aquatics Center and an increased rate per visit and an increased monthly cap. [Link](#)
6. Approval of Bid for West Side Park Mobility Upgrades
Staff recommends awarding the contract to lowest bidder A + A Concrete of Urbana IL for \$97,475.00 and authorizing the Executive Director to enter into the contract. [Link](#)
7. Approval of Bid for Spalding Skate Park Safety Netting
Staff recommends accepting the low, responsible bid and authorizing the Executive Director to enter into a contract with Midwest Netting Solutions for the purchase and installation of the safety netting for a total of \$76,505.33. [Link](#)
8. Approval of Bid for the Construction of the Henry Michael Park Shelter
Staff recommends the Board approve utilizing capital project and ADA funding to complete the project; accept the low, responsible bid and authorize the Executive Director to enter into a contract with Concrete, Inc. for the Henry Michael Park Shelter project for a total of \$31,795.61. [Link](#)

K. DISCUSSION ITEMS

1. FY25 Annual Operating Budget and Budget Book
2. Champaign Parks Foundation – 3rd Quarter Financial Update [Link](#)
3. Champaign Park District – 3rd Quarter Financial Update

L. COMMENTS FROM COMMISSIONERS

M. EXECUTIVE SESSION

The Board will convene into Executive Session under the Illinois Open Meetings Act, specifically 5 ILCS 120/2 (c)(1) (1) The appointment, employment, compensation, discipline, performance, or dismissal of specific employees, specific individuals who serve as independent contractors in a park, recreational, or educational setting, or specific volunteers of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee, a specific individual who serves as an independent contractor in a park, recreational, or educational setting, or a volunteer of the public body or against legal counsel for the public body to determine its validity.

N. RETURN TO REGULAR MEETING

O. ADJOURN



REPORT TO PARK BOARD

FROM: Sarah Sandquist, Executive Director

DATE: March 27, 2024

SUBJECT: Presentation of Distinguished Service Award to Andy Heaton, Josh Hughes-Patton, Miguel Gaona and Ryan Musgrove.

Background

Staff commend four employees, Andy Heaton, Miguel Gaona, Ryan Musgrove and Josh Hughes-Patton for their quick and coordinated response to help a community member during a life-threatening situation.

While driving to a park, these four individuals noticed a truck driving erratically and saw the driver slumped over, unconscious. The truck crossed lanes of traffic, jumped a curb and came to rest on a berm. These four safely pulled over, and called 911 while approaching the locked and still-running vehicle. Unable to get doors open, and with driver still unconscious, Ryan broke open a back window and the others were able to get the door open, secure the vehicle and scene, and get the individual out of the car and onto the ground in preparation for aid. The individual had very labored breathing and they made sure he was in a safe area and continued to monitor his breathing until medical personnel arrived. They then assisted law enforcement in documenting the incident. And then they finished the rest of the work day.

Thankfully, all of them had previous formal training in emergency situations similar to this.

This recognition will honor their commitment to the welfare and betterment of the community.

Recommended Action

Staff recommend the Board formally acknowledge and approve the Distinguished Service Award for Andy Heaton, Miguel Gaona, Ryan Musgrove, and Josh Hughes-Patton from the Operations and Planning Department.

Prepared by:

Daniel J. Olson
Director of Operations
and Planning

Reviewed by:

Bret Johnson
Asst. Director of Operations
and Planning

Reviewed by:

Tommy Buhr
Ground Supervisor

Reviewed by:

Sarah Sandquist
Executive Director

Distinguished Service Award



THIS CERTIFICATE IS PROUDLY PRESENTED TO

Andy Heaton

FOR GOING ABOVE AND BEYOND
TO SERVE THE RESIDENTS OF CHAMPAIGN

DATE

CRAIG W. HAYS, PARK BOARD PRESIDENT



CHAMPAIGN
PARK DISTRICT

Distinguished Service Award



THIS CERTIFICATE IS PROUDLY PRESENTED TO

Josh Patton

FOR GOING ABOVE AND BEYOND
TO SERVE THE RESIDENTS OF CHAMPAIGN

DATE

CRAIG W. HAYS, PARK BOARD PRESIDENT



CHAMPAIGN
PARK DISTRICT

Distinguished Service Award



THIS CERTIFICATE IS PROUDLY PRESENTED TO

Miguel Gaona

FOR GOING ABOVE AND BEYOND
TO SERVE THE RESIDENTS OF CHAMPAIGN

DATE

CRAIG W. HAYS, PARK BOARD PRESIDENT



**CHAMPAIGN
PARK DISTRICT**

Distinguished Service Award



THIS CERTIFICATE IS PROUDLY PRESENTED TO

Ryan Musgrove

FOR GOING ABOVE AND BEYOND
TO SERVE THE RESIDENTS OF CHAMPAIGN

DATE

CRAIG W. HAYS, PARK BOARD PRESIDENT



**CHAMPAIGN
PARK DISTRICT**

**CHAMPAIGN PARK DISTRICT
MINUTES OF THE SPECIAL MEETING
BOARD OF PARK COMMISSIONERS**

February 28, 2024

The Champaign Park District Board of Commissioners held a Special Board Meeting on Wednesday, February 28, 2024, which commenced at 5:30 p.m. at the Bresnan Meeting Center, 706 Kenwood Road, Champaign, Illinois, pursuant to published notice duly given. President Craig W. Hays presided over the meeting.

Present in person: President Craig W. Hays, Vice President Timothy P. McMahon, Commissioners Barbara J. Kuhl, and Michael R. Somers, Sarah Sandquist, Executive Director, Jarrod Scheunemann, Secretary and Deputy Executive Director, Attorney Guy C. Hall, and Treasurer Donna Lawson.

Commissioner Jane L. Solon was absent and excused with prior notice duly given.

Staff present in person: Chelsea Norton, Director of Marketing and Development, Cynthia Mattingly, Interim Finance Director, Dan Olson, Director of Operations and Planning, Heather Miller, Director of Human Resources, Jimmy Gleason, Director of Facilities, Joe Kearfott, Assistant Director of Facilities, Justin Matthew, Part-Time Building Service Worker, Kevin Williams, Building Service Worker Supervisor, and Pete Frieden, Maintenance Specialist – Electrical.

Other in-person attendees: Colleagues, friends, and family of Justin Matthew.

Call to Order

President Miller called the meeting to order at 5:30 p.m.

Comments from the Public

None.

Mr. Olson introduced Mr. Kevin Williams, Building Service Worker Supervisor, and Ms. Sandquist introduced Ms. Cynthia Mattingly, contracted Interim Director of Finance from Clifton, Larson, Allen.

Consent Agenda

President Hays stated that all items on the Consent Agenda are considered routine and shall be acted upon by one motion.

1. Approval of Minutes of the Regular Board Meeting, February 14, 2024
2. Approval of Minutes of the Executive Session, February 14, 2024

Vice President McMahon made a motion to approve the Consent Agenda as presented. The motion was seconded by Commissioner Somers and unanimously approved.

New Business

1. Approval of Distinguished Service Award

Staff recommended Justin Matthew; part-time Building Service Worker at the Leonhard Recreation Center be recognized with the Distinguished Service Award due to his exemplary action of saving a dog that had been abandoned in a cage outside of the former residence of the Champaign County Humane Society.

Commissioner Kuhl made a motion to approve a Distinguished Service Award in honor of Justin Matthew's heroic act. The motion was seconded by Commissioner Somers. The motion passed 4-0.

2. Approval of Setting a Public Hearing on the Budget and Appropriation Ordinance

Staff recommends the Board set a Public Hearing on the proposed Budget and Appropriation Ordinance for Wednesday, April 10, 2024, at 5:30 p.m. at the Bresnan Meeting Center to receive public comments. Ordinance No. 678, the proposed Budget and Appropriation Ordinance, is at the Bresnan Meeting Center for public review.

Commissioner Kuhl made a motion to approve setting a Public Hearing on the proposed Budget and Appropriation Ordinance for Wednesday, April 10, 2024, at 5:30 p.m. at the Bresnan Meeting Center to receive public comments. The motion was seconded by Commissioner Somers and unanimously approved.

3. Approval of Agreement with Challenger Soccer Sports, Inc.

Mr. Gleason presented the report. He reported that the Park District has been working with Challenger Soccer Sports, Inc. since 2004 to host soccer camps. Mr. Gleason noted that a three-year agreement offers several advantages, including securing fees and jersey expenses.

Discussion ensued regarding enrollment numbers and participation trends. Mr. Gleason responded that post pandemic enrollment has improved, however, competition has increased. Cancellation minimums for participation are available in the unlikely event of low enrollment.

Commissioner Kuhl made a motion to approve an agreement with Challenger Soccer Sports, Inc. The motion was seconded by Vice President McMahon. The motion passed 4-0.

Old Business

1. Approval of Easements for Ameren at Kaufman Park

Ms. Sandquist reported that Ameren's representatives have signed copies of the temporary and permanent easements for Ameren at Kaufman Park, and staff have connected the Illinois Department of Natural Resources (IDNR) with Ameren to seek IDNR's approval pursuant to its Land, Water, and Conservation Fund encumbrance at Kaufman Park.

Discussion and clarifications ensued about circumstances surrounding IDNR's approval.

Vice President McMahon made a motion to approve easements with Ameren at Kaufman Park subject to IDNR approval. The motion was seconded by Commissioner Somers. The motion passed 4-0.

2. Approval of Updates to Full-Time Wages

Ms. Sandquist reported about the full-time staff wage adjustment program pursuant to previously requested updates from the Commissioners at the February 14, 2024, Regular Board meeting. These updates included total budgetary impact, Illinois Municipal Retirement Fund (IMRF) contribution rate averages, and wage adjustment distribution based on evaluations.

Commissioner Kuhl noted discrepancies in the reported total budget for full-time wages and requested verification.

After discussion, Commissioner Kuhl made a motion to approve updates to the full-time staff wages with a total budget full-time staff wage increase of 3.33%, an exclusion of salary increases for the Executive Director, CUSR roles, union positions, or staff hired after December 1, 2023, prorated adjustments for employees hired or whose wages changed between June 1, 2023, and

November 30, 2023 based on the duration of their employment or new wage within this period, and salary corrections of a 6% increase for the Director of Marketing and Development & Accounting and Procurement Clerk, pending verification of the total full-time staff salary budget line item. The motion was seconded by Vice President McMahon. The motion passed 4-0.

Discussion

1. Request for Proposals Seasonal Concessions

Mr. Gleason reported about Park District concessions. He presented the historical context for Park District concessions and cited inconsistencies in revenue, food handling requirements, and staff hiring/training as reasons for investigating new options. Several vendors have submitted proposals and Mr. Gleason highlighted JMB Industries and Tom's Travelin' Coffee Truck as two options that could work together to provide concessions services at Dodd's Park sports complex and Sholem Aquatic Center for the summer season.

Discussion and clarification ensued regarding permitting food trucks on Park District property, insurance requirements, and request for proposal distribution.

The Board came to consensus directing staff to proceed with seeking Board approval at the March 27, 2024 Special Meeting.

2. Strategic Plan Update – 4th Quarter

Ms. Sandquist provided a status report summarizing recent activities that have advanced the Park District's strategic plan goals. She noted activities that are preparing the Park District to develop its next strategic plan.

3. FY25 Annual Operating Budget

Mr. Blazaitis presented a draft of the FY25 budget book as prepared utilizing the new OpenGov software. The highlights from the proposed budgets for Marketing, Administration, Human Resources, Virginia Theatre, Operations and Planning, Facilities, and Recreation will be presented to the Board at its March 27, 2024, Special Board meeting.

Discussion and clarifications ensued about Board interaction with the online format, how to present requested revisions, and the staff budget process.

Comments from Commissioners

Commissioner Somers commended the Virginia Theatre staff for the NRPA Gold Medal legacy event and That's What She Said event. The other Commissioners agreed and expressed their thanks and commendations as well.

Executive Session

Vice President McMahon moved pursuant to the basis set forth below to convene into Executive Session. The motion was seconded by Commissioner Somers and unanimously approved. The Board convened into Executive Session under the Illinois Open Meetings Act, specifically 5 ILCS 120/2 (c)(6) The setting of a price for sale or lease of property owned by the public body.

Return to Regular Meeting

Following the adjournment of the Executive Session, the Board reconvened in an open meeting.

Adjourn

There being no further business to come before the Board, Commissioner Kuhl made a motion to adjourn the meeting. The motion was seconded by Vice President McMahon. The motion passed 4-0 and the meeting was adjourned at 6:45 p.m.

Approved

Craig W. Hays, President

Jarrod Scheunemann, Secretary



REPORT TO PARK BOARD

FROM: Sarah Sandquist, Executive Director

DATE: March 27, 2024

SUBJECT: Playground Surfacing Bid (Fibar)

Background

This Playground Surfacing Bid is specifically for the annual purchase of engineered wood fiber (Fibar) to be used District-wide for FY 2024/2025. This material is used within playgrounds as safety surfacing for fall protection and to meet ADA compliance.

An invitation to bid was published in *The News-Gazette* and bids were opened and read aloud on Tuesday, March 19, 2024. The results are as follows:

| BIDDER | BASE BID/YD ³ DELIVERED |
|--------------------------------|------------------------------------|
| J & L Morris Trucking | \$ 19.00 |
| Stillwater Mulch, Inc. | \$ 19.40 |
| Technology International, Inc. | \$ 57,000.00 |

Prior Board Action

The Park Board has approved this expenditure each fiscal year.

Previous winning bids:

| Year | Distributor | Base Bid/Cu. Yd. |
|---------|------------------------|------------------|
| FY23-24 | J & L Morris Trucking | \$ 18.50 |
| FY22-23 | J & L Morris Trucking | \$ 18.25 |
| FY21-22 | J & L Morris Trucking | \$ 17.50 |
| FY20-21 | J & L Morris Trucking | \$ 17.50 |
| FY19-20 | Stillwater Mulch, Inc. | \$ 17.90 |
| FY18-19 | J & L Morris Trucking | \$ 16.30 |

Budget Impact

\$35,000 has been budgeted in the 2024/2025 Budget for Playground Surfacing.

Recommended Action

Staff recommends accepting the low, responsible bid and authorizing the Executive Director to purchase playground surfacing (Fibar) from J & L Morris Trucking at a bid price of \$19.00 per cubic yard, delivered.

Prepared by:

Daniel J. Olson
Director of Operations and Planning

Reviewed by:

Sarah Sandquist
Executive Director

The mission of the Champaign Park District is to enhance our community's quality of life through positive experiences in parks, recreation, and cultural arts.



REPORT TO PARK BOARD

FROM: Sarah Sandquist, Executive Director

DATE: March 27, 2024

SUBJECT: Virginia Theatre Rigging Control System Replacement—AIA Agreement

Background

In 2012, the Champaign Park District (park district) closed the Virginia Theatre (theatre) for eleven months to complete “Phase III” of the facility’s planned restoration. Included in the project was the complete replacement of the Virginia’s “fly” system, which led to the installation of a modern motorized, computer-controlled system to raise and lower theatrical pieces, including sets, backdrops, curtains, screens, lighting, and sound equipment, and even performers above the Virginia stage.

Commissioned in April 2013, the Virginia Theatre’s new rigging control system was manufactured by the Vortek division of Daktronics, Inc., and marked a significant improvement over the facility’s previous fly apparatus, an imprecise, labor-intensive “pinrail” system which was original to the (1921) building and consisted of hemp rope, bags of sand (to act as counterweights), and pieces of steel tackle.

However, throughout its period of use, the theatre’s Vortek system has also had ongoing problems with repeated error codes and frequent breakdowns. The manufacturer, Daktronics, sold its Vortek division to ETC in July 2014, and ETC has since then “sunset” the product line and is no longer providing updates for its operating system, firmware, hardware, or software. This has resulted in the theatre experiencing a steady increase in troubling performance issues, culminating in several times over the past three years where the theatre fly system was not operational. In each case, outside vendors have been able to work with theatre staff to make repairs, but the issues continue to worsen and can, when they arise, present a threat to both productions and safety.

On October 23, 2023, the park district executed an agreement with GHR Engineers and Associates, Inc. (GHR) for \$7,500.00 to develop a proposal outlining the specifics of a rigging control upgrade project at the theatre. This “pre-design” work by GHR included on-site meetings and correspondence with staff and various rigging contractors, development of an initial narrative detailing the rigging control system upgrade requirements, cost estimates capturing the full scope of the project, and a schedule for the work to be done.

On January 24, 2024, GHR sent the park district its proposal along with a formal AIA agreement for a rigging control upgrade project at the Virginia Theatre, at a total cost of \$54,000.00 in professional services fees. The proposal indicates the following project deliverables would be provided under the agreement:

- All project design work;
- Detailed cost estimates of all system replacement designs throughout design phase;

The mission of the Champaign Park District is to enhance our community’s quality of life through positive experiences in parks, recreation, and cultural arts.

- Site visits and meetings during design phase, as needed, to develop acceptable system replacement design documents;
- A complete set of biddable and buildable construction documents, full-size Drawings, and project-manual specifications;
- Complete contract-administration services, including:
 - Bidding assistance (answering RFIs, issuance of addenda, low-bid review etc.);
 - Shop drawing review;
 - Regular on-site observation and attendance at construction meetings (includes two site visits per month);
 - Project close-out (review of O&M's, etc.);
- Construction administration during project phase.

The total project cost for the Virginia Theatre rigging control upgrade project is currently estimated at up to \$750,000.00.

Prior Board Action

At their February 8, 2023, meeting, the Champaign Park District Board of Commissioners approved a Capital Plan for FY24 that included the replacement of the rigging control system at the Virginia Theatre, with an estimated cost of \$250,000.00.

Budget Impact

Though GHR has indicated that their initial estimate is likely to turn out to be higher than the actual project costs, the park district could ultimately be responsible for an additional expenditure of up to \$500,000.00 over the amount budgeted in the Capital Plan to upgrade the theatre's rigging control system.

Recommended Action

Staff recommends that the Board accept the proposal and authorize the Executive Director to enter into the provided AIA agreement with GHR Engineers & Associates, Inc., of Champaign, IL, in the amount of \$54,000.00 to provide design and construction administration services for the Virginia Theatre rigging control system upgrade.

Prepared by:

Reviewed by:

Steven Bentz
Director, Virginia Theatre

Sarah Sandquist
Executive Director

DRAFT AIA® Document B101® - 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 23rd day of January in the year 2024
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Champaign Park District
Virginia Theatre
203 West Park Avenue
Champaign, Illinois 61820

and the Architect:
(Name, legal status, address and other information)

GHR Engineers and Associates, Inc.
1615 South Neil Street
Champaign, Illinois 61820

for the following Project:
(Name, location and detailed description)

Rigging Control System Replacement
Virginia Theatre
Champaign Park District
GHR Project No. 7603

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Control system replacement at the Virginia Theatre as described in 2023.11.17 Virginia Rigging Control System Replacement Letter as attached and incorporated herein.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

Project includes replacement of the Theatre's existing rigging control system and possible batten replacements.« »

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

Total Construction Budget of \$752,054.

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

CPD Issue GHR a Design Contract

03.29.2024

| | |
|---------------------------------|-------------------------|
| GHR Begin Design | 04.01.2024 – 05.24.2024 |
| Issue for Bidding | 05.27.2024 – 06.14.2024 |
| Bid Evaluation / Recommendation | 06.17.2024 – 06.28.2024 |
| Board Approval | 07.10.2024 |
| Contracts Signed | 07.11.2024 – 07.25.2024 |
| Shop Drawings | 07.26.2024 - 09.06.2024 |
| Control Lead Time | 09.09.2024 - 01.10.2025 |
| Installation | 01.13.2025 - 03.21.2025 |

.2 Construction commencement date:

07.25.2024

.3 Substantial Completion date or dates:

03.24.2025 – 04.04.2025

.4 Other milestone dates:

Final Completion – 04.07.2025 – 04.11.2025

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Competitive Bid

§ 1.1.6 The Owner’s anticipated Sustainable Objective for the Project:
(Identify and describe the Owner’s Sustainable Objective for the Project, if any.)

N/A

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner’s Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

Steven Bentz
 Director
 Virginia Theatre
 203 West Park Avenue
 Champaign, IL 61820
 Phone (217) 819-3902
 Fax (217) 356-5729
 steven.bentz@champaignparks.org

§ 1.1.8 The persons or entities, in addition to the Owner’s representative, who are required to review the Architect’s submittals to the Owner are as follows:
(List name, address, and other contact information.)

N/A

§ 1.1.9 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

N/A
« »
« »
« »
« »

.2 Civil Engineer:

« »« »
« »
« »
« »
« »

.3 Other, if any:

(List any other consultants and contractors retained by the Owner.)

« »

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address, and other contact information.)

Lucas E. McGill, PE
GHR Engineers and Associates, Inc.
1615 South Neil Street
Champaign, Illinois 61820
Phone (217) 356-0536
Fax (217) 356-1092
lmcgill@ghrinc.com

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

« »« »
« »
« »
« »
« »

.2 Mechanical Engineer:

« »« »
« »
« »
« »
« »

.3 Electrical Engineer:

GHR Engineers and Associates, Inc.

§ 1.1.11.2 Consultants retained under Supplemental Services:

N/A

§ 1.1.12 Other Initial Information on which the Agreement is based:

2023.01.24 Virginia Rigging Control System Replacement Letter – Exhibit A

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than (see attached Accord Certification, Exhibit B) for each occurrence and in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than (see attached Accord Certification, Exhibit B) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than (see attached Accord Certification, Exhibit B).

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than (see attached Accord Certification, Exhibit B) per claim and in the aggregate.

§ 2.5.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other

requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect’s response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect’s decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect’s certification for payment shall constitute a representation to the Owner, based on the Architect’s evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor’s Application for Payment, that, to the best of the Architect’s knowledge, information and belief, the Work has

progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect’s knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect’s inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect’s Supplemental Services and the Owner’s Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

| Supplemental Services | Responsibility <i>(Architect, Owner, or not provided)</i> |
|---|---|
| § 4.1.1.1 Programming | Not Provided |
| § 4.1.1.2 Multiple preliminary designs | Not Provided |
| § 4.1.1.3 Measured drawings | Architect as Basic Service |
| § 4.1.1.4 Existing facilities surveys | Architect as Basic Service |
| § 4.1.1.5 Site evaluation and planning | Architect as Basic Service |
| § 4.1.1.6 Building Information Model management responsibilities | Not Provided |
| § 4.1.1.7 Development of Building Information Models for post construction use | Not Provided |
| § 4.1.1.8 Civil engineering | Not Provided |
| § 4.1.1.9 Landscape design | Not Provided |
| § 4.1.1.10 Architectural interior design | Not Provided |

| Supplemental Services | Responsibility <i>(Architect, Owner, or not provided)</i> |
|---|---|
| § 4.1.1.11 Value analysis | Architect as Basic Service |
| § 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3 | Architect as Basic Service |
| § 4.1.1.13 On-site project representation | Architect as Basic Service |
| § 4.1.1.14 Conformed documents for construction | Architect as Basic Service |
| § 4.1.1.15 As-designed record drawings | Architect as Basic Service |
| § 4.1.1.16 As-constructed record drawings | Not Provided |
| § 4.1.1.17 Post-occupancy evaluation | Not Provided |
| § 4.1.1.18 Facility support services | Not Provided |
| § 4.1.1.19 Tenant-related services | Not Provided |
| § 4.1.1.20 Architect's coordination of the Owner's consultants | Not Provided |
| § 4.1.1.21 Telecommunications/data design | Not Provided |
| § 4.1.1.22 Security evaluation and planning | Not Provided |
| § 4.1.1.23 Commissioning | Not Provided |
| § 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3 | Not Provided |
| § 4.1.1.25 Fast-track design services | Not Provided |
| § 4.1.1.26 Multiple bid packages | Not Provided |
| § 4.1.1.27 Historic preservation | Not Provided |
| § 4.1.1.28 Furniture, furnishings, and equipment design | Not Provided |
| § 4.1.1.29 Other services provided by specialty Consultants | Not Provided |
| § 4.1.1.30 Other Supplemental Services | Not Provided |
| | |

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

N/A

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

N/A

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 **Two (2)** reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 **Eight (8)** visits to the site by the Architect during construction
- .3 **Two (2)** inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 **Two (2)** inspections for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within « » (« ») months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the Owner is the copyright owner of such information as work-for-hire and permission from the copyright owner to transmit such information for its use on the Project has been given.

§ 7.2 Under the work-for-hire doctrine, Owner shall be deemed the owner of the Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of any reserved rights.

§ 7.3 The Owner grants a license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Architect substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Architect to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If this Agreement terminates for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the Architects as authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect which shall not be unreasonably withheld. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of

the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: (Specify)

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration

§

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect may be compensated for expenses incurred in the

interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules may be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination and Reimbursable Expenses incurred.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion except for terms which by their nature and extent would ordinarily survive.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site, provided that, the Architect shall promptly inform the Owner if any such materials or substances are discovered.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1 or as otherwise required by law. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

.1 Stipulated Sum
(Insert amount)

\$54,000

.2 Percentage Basis
(Insert percentage value)

<< >> (<< >>) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other
(Describe the method of compensation)

<< >>

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

N/A

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Options to be determined.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus « » percent (« »%), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

« »

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

| | | | | |
|------------------------------|-------------|-----------|-----|----|
| Construction Documents Phase | Eighty | percent (| 80 | %) |
| Procurement Phase | Five | percent (| 5 | %) |
| Construction Phase | Fifteen | percent (| 15 | %) |
| Total Basic Compensation | one hundred | percent (| 100 | %) |

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See attached GHR Engineers Standard Schedule of Hourly Rates (Exhibit C)

| Employee or Category | Rate (\$0.00) |
|----------------------|---------------|
|----------------------|---------------|

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;

- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent (10 %) of the expenses incurred.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:
(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

N/A

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of Zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of N/A (\$ « ») shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, the Architect will submit monthly invoices for payment for services provided during the preceding month, and such invoices will be paid in accordance with the Illinois Prompt Payment Act (50 ILCS 505/1, et seq). Amount unpaid will accrue interest in accordance with the Illinois Local Government Prompt Payment Act.

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

N/A

ARTICLE 13 SCOPE OF THE AGREEMENT

§ Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

N/A

This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*

« »« »

(Printed name and title)

ARCHITECT *(Signature)*

Lucas E. McGill, PE

(Printed name, title, and license number, if required)





REPORT TO PARK BOARD

FROM: Sarah Sandquist, Executive Director

DATE: March 20, 2024

SUBJECT: Approval of License Agreement with JMB Industries, Inc.

Background

In recent history the Sholem Aquatics Center (Sholem) and Dodds Park 4-Plex (Dodds) concessions stands have had various levels revenue and subsidy. Unfortunately, this past year, both sites were subsidized due to various circumstances. Additionally, concessions stands have recently had their permit exemption status requirements removed. The Champaign Park District (Park District) is now required to have staff with a Food Managers License on site. This is a difficult certification test that seasonal managers must study for and take after hiring, which is challenging, both in degree of difficulty and timing. The course costs \$121 per person and has not been passed by several staff in the past. This has increased expenses and made it challenging to achieve compliance.

Due to the varying levels of success, more stringent permitting requirements, and the large amount of staff time dedicated to interviewing, training, and supervising the stands, staff issued request for proposals (RFPs) for potential vendors to manage the Park District's concession stands at both Dodds and Sholem. Staff believe having vendor-provided concessions will allow the Park District to offer high quality concessions to the community while limiting risk and reducing staff time dedicated to the concessions stands. This will allow staff to be more dedicated to the rest of the members' experience at Sholem and Dodds and programming efforts at both locations.

Three organizations submitted RFPs by the deadline including JMB Industries, Inc (DBA: Ice Daddy's & Patty Daddy's), Guerrero Azteca Food Truck, and Kona Ice/Travelin' Tom's Coffee; all of which were presented to the Board on February 28th. After receiving guidance from the Board, staff prepared a license agreement with JMB Industries, Inc. to operate the Sholem concessions stand. Additionally, staff are developing a standard one-year contract with JMB Industries, Inc., Kona Ice of Champaign, and Travelin' Tom's Coffee for concessions at Dodds, special events, and other programs as needed.

Budgetary Impact

The full budgetary impact is unknown, but staff expect revenue to increase and a reduction of the associated risk of operating after receiving 13% of JMB Industries, Inc. gross sales.

Recommendation

Staff recommend approval of a License Agreement with JMB Industries, Inc. to use Sholem Aquatic Center for the purpose of concessions food and beverage.

Prepared by:

Reviewed by:

Jimmy Gleason
Director of Facilities & Technology

Sarah Sandquist
Executive Director

**LICENSE AGREEMENT
BETWEEN THE CHAMPAIGN PARK DISTRICT AND JMB INDUSTRIES, INC.**

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2024 by and between the Champaign Park District, an Illinois Municipal Corporation (hereinafter referred to as, "Park District" or "Licensor"), having a principal address is 706 Kenwood Road, Champaign, Illinois, 61821, and JMB Industries, Inc. (hereinafter referred to as, "JMB" or "Licensee") with a principal mailing address of 1205 Northwood Dr., Mahomet, IL 61853.

Section 1 - Recitals:

WITNESSETH:

WHEREAS, the Park District owns and utilizes a concession facility on the premises (hereinafter referred to as, "Property") of Sholem Aquatics Center located at 2205 Sangamon Drive, Champaign, IL 61821; and

WHEREAS, the District is willing to enter into a non-exclusive license agreement with JMB for it to use the Property for the purpose of concessions food and beverage sales for the period stated herein. Park District shall maintain all its possessory rights and right to inspect the Property at all times in its sole discretion; and

WHEREAS, JMB shall be the sole concession vendor on site at Sholem Aquatics Center, provided that, the Park District may utilize services from other concessions vendors at other locations; and

WHEREAS, JMB shall operate the concession stand on Property and may park one of its food trucks in the gated concessions seating area on mutually agreed dates and times as additional support to the concession facility operations for certain weekends and events.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 2 - General Purposes: The purpose of this Agreement is to set forth the terms and conditions under which JMB shall utilize the Property on a non-exclusive basis to operate concession food and beverage sales, and under which JMB shall indemnify and hold harmless the Park District for injuries and claims associated with this license.

Section 3 - Term: The terms of this Agreement shall commence as of the effective date. The Agreement shall continue for only one (1) year subject to extension only by mutual written agreement.

Section 4 - Fee: The license fee of 13% of gross sales, defined as the total of sale transactions on the property, excluding deductions for goods, supplies, equipment, taxes, discounts, licenses, fees, rent, utilities, payroll, or any other expense, shall be paid by Licensee to Licensor beginning on May 24, 2024, and thereafter on the first day of each month, through September 3, 2024. In the event of late payment, Licensee shall pay \$50.00 for every five-day calendar period the fees are late.

Section 5 - JMB Rights and Responsibilities:

JMB shall:

- A. Exclusively operate concession goods and services at the Property, including the concession facility attached to the Sholem Aquatics Center and up to one (1) food truck in the gated concessions area only to support the facility sales on mutually agreed upon dates and times in which there is anticipated substantial traffic events or on weekends.
- B. Be responsible for acquiring and maintaining all necessary licenses, registrations, certifications, and permits required for operation by local, state and federal law.
- C. Provide food products for sale from sources approved or deemed satisfactory by the Champaign-Urbana Public Health Department.
- D. Adhere to the Park District's exclusive contract with Pepsi-Cola Champaign-Urbana Bottling Co.
- E. Sell only items approved and at cost listed on the Menu attached as Exhibit A, unless otherwise agreed upon by the Director of Facilities and Technology and or their designated staff.
- F. Offer concession sales during all operating public swim hours from May 25, 2024 through September 2, 2024 with the exception of the last 30 minutes of public swim hours and the first 30 minutes of public swim hours. JMB may choose to operate as soon as public swim hours begin, but is not required to operate until 30 minutes after open. JMB shall close operations nightly 30 minutes prior to the scheduled close unless mutually agreed upon by Park District staff in order to clean and exit the facility in a timely manner.
- G. Indicate which existing equipment made available by the Park District is desired for use by April 5, 2024. JMB will be responsible for the maintenance of this equipment for the duration of the contract. Upon conclusion of this Agreement, the equipment shall remain the property of the Park District.
- H. Be responsible for supplying any additional necessary equipment to perform the Agreement. It is agreed that any permanent improvements or additions made to Park District concession facilities shall become the property of the Park District at the completion, termination or default in the performance of this Agreement. JMB specifically agrees that no structural alteration shall be undertaken without the written approval of the Director of Facilities and Technology of the Park District or their designee.
- I. Keep at all times on public display the prices, rates and charges which may be made for the sale of goods and services to the public. Concession signage shall be attractive, professional, ADA compliant and must be approved by Park District.
- J. Be responsible for hiring the necessary personnel or soliciting the necessary volunteers to conduct operation of the concessions as well as complying with all federal, state and local laws including minimum wage, social security, nondiscrimination, Fair Labor Standards Act, unemployment compensation and workers' compensation.
- K. At all times provide an on-duty, qualified, and competent supervisor at the Property who shall be authorized to represent and act for JMB in matters pertaining to the day-to-day operation. JMB further agrees to always have sufficient attendants on duty to render adequate public service.
- L. All employees and/or volunteers of the JMB shall be neatly and properly dressed according to any standard set by Park District and shall be courteous to the public.
- M. Conduct background checks and cross check of the Federal Sex Offender Registry on all employees/volunteers and submit them to the Director of Facilities and Technology prior to employment. The background checks shall be paid for by JMB and shall not be reimbursed by the Park District.
- N. Repair any damages to Park District property resulting from negligence or neglect of daily routine cleaning and maintenance on JMB's part or on the part of any of their employees or agents. Failure to make said repairs after receiving written notice from the Park District shall result in Park District repair, which shall be reimbursed by JMB within fifteen (15) days after notice. Failure to make such reimbursement shall be a default under this Agreement and basis for termination at the discretion of the Park District.
- O. Upon termination of the Agreement the premises shall be cleaned and returned to the Park District in the same condition or better than they were found at the commencement of this Agreement, normal wear and tear excepted.
- P. Ensure that all garbage generated from the operation is placed into designated trash or recycling containers. JMB is responsible for cleaning and trash removal of immediate area adjacent to concession location(s). Disposal costs shall be the responsibility of the Park District.
- Q. Be responsible for calculating and remitting state and local sales and food and beverage tax for items sold. Copies of sales tax returns shall be available to Park District upon request.

- R. Not permit on the premises any gambling or games of chance, or install or operate, or permit to be installed or operated, any device or conduct any activities which, in the opinion of the Park District, are contrary to good morals or are otherwise objectionable. No weapons, including guns, or dangerous/hazardous materials are to be brought to or stored on site.
- S. Not employ or use any persons known as “criers” or other noise makers as a means of attracting attention to the JMB’s business, not approved by the Park District, or to the extent of creating a nuisance.
- T. Not display or advertise any products or company logos for Pepsi competitors.
- U. Indemnify, defend and hold harmless the Park District and all of its commissioners, officers, employees, agents, representatives, and volunteers from and against any and all liability, loss, costs, causes of action, demands, taxes, attorney's fees, expenses, claims, suits and judgments of whatsoever kind and character, including without limitation, all possible costs of responding to demands in whatever form that may take for the duration of the period when any such claim may be made and final disposition thereof, with respect to any such claim made against the Park District that arises solely from an act, failure or omission on the part of JMB or any of its members, managers, officers, employees, independent contractors, agents, representatives, successors or assigns thereof with regard to this Agreement.
- V. JMB acknowledges and agrees that neither it nor anyone acting on its behalf is an employee of the Park District, and no one is entitled to any benefits or protections afforded employees of the Park District, nor considered employees of the Park District. Nevertheless, JMB will not act contrary to the policies of the Park District. JMB understands and agrees that neither it nor anyone acting on its behalf shall be insured under provisions of the unemployment compensation insurance of the Park District or the workers’ compensation insurance of the Park District, and that any injury or property damage in connection with any work or services performed under the auspices of JMB will be JMB’s sole responsibility and not that of the Park District. It is also understood that neither JMB nor anyone acting on its behalf is protected as an employee or as a person acting as an agent or employee under the provisions of the general liability insurance of the Park District and, therefore, JMB will be solely responsible for JMB’s own acts or omissions, and those of JMB’s employees, representatives, and agents, if any. The Park District shall not in any manner whatsoever be obligated to defend, indemnify or hold harmless JMB, or JMB’s employees, representatives, and agents, if any, in matters of liability.
- W. JMB acknowledges and agrees that JMB is solely responsible to pay all applicable federal, state and local income and withholding tax obligations or contributions imposed pursuant to the U.S. Internal Revenue Code, Social Security, unemployment insurance and worker’s compensation insurance on behalf of JMB and its representatives and agents, if any.
- X. Assure that any structural changes to the Property (if permitted by the Park District) conforms with all Americans with Disabilities Act (ADA) requirements, and other structural and operational requirements imposed by law or regulation.
- Y. Be responsible for all costs associated with the operation and maintenance of the concession facility. Maintain the concession facility in a neat and orderly fashion that meets the Park District’s standards.
- Z. Provide business information to Director of Facilities and Technology to be posted on Park District website.
- AA. Provide Park District staff working on shift discounts on food and beverage, which shall be at cost to JMB. Staff pricing shall be submitted to the Director of Facilities and Technology before opening day.
- BB. Provide Park District staff mutually agreed upon complimentary meal options in return for Park District POSI dollars. JMB shall then turn in each redeemed POSI dollar at the end of the month and reduce the Park District’s monthly fee by the cost of meals provided to Park District staff. Meals shall be redeemed at cost to JMB.
- CC. Utilize one of the Pepsi fountain nozzles exclusively for Park District Lifeguard staff Gatorade. The Gatorade bibs shall be purchased by the Park District. Lifeguards may then receive free Gatorade at Park District cost by bringing their own refillable cup to the concessions stand.
- DD. Provide a certificate of such insurance as may be applicable from time to time, listed below, at the time Agreement is signed and annually thereafter. All limits of liability for insurance shall be not less than the following amounts, and must be greater where required by other laws or regulations and must be insured on an “occurrence” basis and not on a “claims made” basis:

JMB shall maintain in effect at its sole expense the following insurance applicable to the work performed hereunder:

- (a) Workers' Compensation:
 - State Statutory
 - Applicable Federal Statutory

- Must show policy number on certificate of insurance if workman's compensation is provided.
- (b) Comprehensive General Liability:
 - General Liability: 1,000,000 each occurrence (including completed operation and products liability)
 - Property Damage: \$1,000,000 each occurrence
 - General Aggregate: \$2,000,000 or a combined single limit of \$2,000,000
 - Property damage liability insurance will provide Explosion, Collapse and underground coverages where applicable.
- (c) Contractual Liability (Hold Harmless Coverage):
 - Bodily Injury: \$1,000,000
 - Property Damage: \$1,000,000 each occurrence
 - Annual Aggregate: \$2,000,000 each occurrence
- (d) Comprehensive Automobile Liability:
 - Bodily Injury: \$1,000,000 Per Person and \$1,000,000 Per Accident
 - Property Damage: \$500,000 each occurrence or combined single limit of \$500,000
- (e) Umbrella Liability:
 - \$5,000,000 each occurrence

The Park District its commissioners, officers, employees, agents, representatives, and volunteers are to be covered and named as additional insureds under the General Liability coverage and shall contain no special limitation on the scope of protection afforded to the additional insureds. The policy and/or coverage shall also contain a "contractual liability" clause.

Prior to beginning work, JMB shall furnish the Park District with certificate(s) of insurance and applicable policy endorsements, extensions, or riders 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 Park District prior to cancellation or material change of any insurance referred to therein. Failure of the Park District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Park District to identify a deficiency from the evidence that is provided shall not be construed as a waiver of JMB obligation to maintain such insurance.

All insurance carriers providing the coverage set forth herein shall have a rating of A as assigned by A.M. Best and Co. and satisfactory to the Park District at its sole discretion. All insurance coverage provided by the JMB shall be primary coverage as to the Park District. Any insurance or self-insurance maintained by the Park District shall be excess of the JMB and shall not contribute to it. All insurance limits of liability shall be not less than the amounts set forth herein and must be greater where required by applicable laws and regulations, with coverage provided on an "occurrence: basis and not a "claims made" basis.

Cancellation of any such coverage without a substitute policy containing the required coverage's being put in force, shall be grounds for the Park District to immediately terminate this Agreement with no further rights afforded JMB. At its option, Park District may continue such insurance at its cost and obtain reimbursement and repayment thereof from JMB. In such event, JMB shall pay the amount due within ten (10) days of payment by Park District. The Parties acknowledge that JMB may from time to time change insurers, provided that, the Park District shall be provided with a certificate of such insurance otherwise conforming to and in compliance with the terms hereof, promptly upon such change.

Section 6 - Champaign Park District Rights and Responsibilities:

The Park District shall:

- A. Maintain ownership of the facility and Property.
- B. Supply and pay for all utilities including gas, electricity, water, sanitary and storm water fees associated with the building.
- C. Provide for repair and maintenance of the building/facility, other than routine daily cleaning/maintenance

procedures, and equipment repair. The Park District shall have the right to enter the facility operated by JMB at any reasonable time to examine the premises, audit services, and make any repairs and improvement that it deems necessary.

- D. Allow JMB staff use of restrooms in the Sholem Aquatics Center.
- E. Communicate any facility closures that may impact operating hours as well as any additional event opportunities JMB may wish to operate outside of public swim hours.
- F. Dispose of trash in the concessions deck area trash cans at the end of each night. Disposal costs shall be the responsibility of the Park District.
- G. Purchase the Lifeguard staff Gatorade bibs.
- H. Provide access to all existing equipment in the concession stand. JMB is responsible for the maintenance of this equipment for the duration of this Agreement. Upon conclusion of this Agreement, the equipment shall remain the property of Park District.
- I. Maintain the hot water heater at Park District cost.
- J. Provide exterior grounds upkeep.
- K. Maintain and operate cameras in the concession stand. Cameras are not monitored and only accessed when footage needs to be reviewed for specific incidents. In the event JMB needs to view footage for loss prevention, missing cash, or such similar circumstance, they may contact the Park District Risk Manager to pull footage. Footage shall not be retrieved for general staff auditing, but only in case of suspected improper behavior such as, suspected improper cash handling, missing product, or accidents on site.
- L. Include JMB information on the Park District website.

Section 7 - Damage to Property: In the event of damage or destruction to Property or any of the adjacent exterior areas on the Property, whether by act, failure, or omission caused by Licensee or by a person or entity using Property in connection with the activities associated with License, Licensee shall submit plans for and complete the repairs necessary to return the Property to substantially the same condition in which it was at the time of the commencement of this Agreement. In the event of reasonably substantial damage to Property such that Park District finds that it has been rendered unusable, this Agreement shall terminate, subject to any insurance claim or indemnification to which Licensor is entitled pursuant to this Agreement. In no event shall Park District be obligated to rebuild or restore Property, and such determination shall be within the sole discretion of Park District.

Section 8 - Usage and Abandonment: Only Licensee or Licensor and their respective commissioners, officers, members, employees, representatives and agents shall be permitted to utilize the Property. In the event that Licensee abandons use of the Property for more than ten (10) days then its rights to use and occupancy of the Property shall cease, and Licensee shall surrender possession to Licensor immediately, without notice, and Licensor shall then have full and free authority to enter upon the Property in order to take possession thereof without such entry constituting a trespass or forcible entry and detainer; provided that the obligation of Licensee to pay the fees as provided for in this Agreement during its full term, or during any extension thereof, shall not be deemed to be waived, released or terminated thereby.

Section 9 - Default: Except as otherwise set forth herein, in the event that either Party fails or refuses to comply with the terms of this Agreement, and cure such default within seven (7) days of written notice as provided for herein, then the other Party shall have the right to terminate this Agreement. Any such termination due to default by Licensee shall not terminate or affect the obligations or rights to enforce the same as they may have accrued prior to termination, and the obligation of Licensee to pay the fees as provided for in this Agreement during its full term, or during any extension thereof, shall not be deemed to be waived, released or terminated thereby. If Licensee shall breach the terms of this Agreement, the Licensor shall be entitled to recover all of its reasonable costs, including reasonable attorney's fees and expenses, incurred in enforcing the terms of this Agreement.

Section 10 - Compliance with Applicable Laws, Rules and Regulations: The Parties, and any officer, employee, agent or representative and any subcontractor with which that Party may enter into any related Agreement shall comply with all applicable federal, state and local statutes, rules, regulations, ordinances and requirements regarding the performance and carrying out of the terms of this Agreement.

Section 11 - Limitation of Enforcement: It is the intention of the Parties that no person or entity other than the Parties shall have any right to bring any action to enforce any provision of this Agreement against either of the Parties hereto, and that the covenants, undertakings, and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the Parties hereto or their respective successors or permitted assigns as otherwise provided for herein.

Section 12 - Equal Opportunity: During the term of this License, or extension thereof, JMB will not exclude anyone from participation in, deny anyone the benefits of, or otherwise subject anyone to discrimination because of the person's race, religion, sex, age, color, genetic status, national origin, physical or mental impairment, or other similar status recognized by law.

Section 13 - Assignment: This Agreement shall not be assigned or delegated by either Party to any person, entity, subsidiary, successor, partner, employee, agent or affiliate without the prior written consent of the other Party, which shall not be unreasonably withheld. If Park District permits assignment of this Agreement at any one time, such assignment shall not be deemed permission to assign the rights or performance of this Agreement at any other time or times.

Section 14 - Applicable Law and Venue: The Parties agree that the laws of the State of Illinois shall govern the terms of this Agreement. In the event of any claim or suit regarding this Agreement, Champaign County, Illinois shall be the applicable venue for any such claim(s) or suit.

Section 15 - Severability: In the event any one or more of the provisions contained in this Agreement are held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such provision(s) shall be deemed severed from this Agreement, and the validity, legality, or enforceability of the remaining provisions of this Agreement or any other application thereof shall not be affected or impaired thereby, and shall, remain in effect.

Section 16 - Waiver: Failure to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement, shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of the right or power at all or any other times.

Section 17 - Counterparts: This Agreement shall be executed in any number of counterparts, each of which shall be deemed an original.

Section 18 - Early Cancellation of License: Licensee acknowledges that Property is publicly owned. As such, in the event of public necessity as reasonably determined within the sole discretion of Licensor, the Licensor may terminate this license unilaterally during its stated term without regard to any act or omission by Licensee.

Section 19 - Notice: All notices, consents, requests, demands and other communications hereunder are to be in writing and are deemed to have been duly given, made or delivered: (i) when delivered in person, (ii) four (4) days after deposit in the United States mail, first class postage prepaid, (iii) in the case of overnight courier services, one (1) business day after delivery to the overnight courier service with payment provided, or (iv) in the case of electronic mail, or facsimile (verification received), when sent.

Section 20 - Interpretation of Agreement: In interpreting this Agreement, the Parties agree that no ambiguities shall be resolved against any Party on the basis that it was responsible, or primarily responsible for having drafted the Agreement. Each of the Parties acknowledges that they did not execute this Agreement under duress, and were represented by or had access to legal counsel in connection with preparing this Agreement. Furthermore, whenever the context so requires: (a) all words used in the singular shall be construed to have been used in the plural (and vice versa); (b) each gender shall be construed to include the other gender; (c) the word "person" shall be construed to include a natural person, corporation, limited liability company or partnership, firm, joint venture, trust, estate, or any other entity, and (d) the words "and" as well as "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of any provision of this Agreement any person, right, obligation or concept which might otherwise be construed to be outside the scope of such provision.

Section 21 - Authority to Execute Agreement: Each person or entity executing this Agreement represents that he/she/it is authorized to execute the Agreement. Each person executing this Agreement on behalf of any entity represents that he or she is authorized to execute this Agreement on behalf of such entity.

Section 22 - Entire Agreement and Amendment: This Agreement and any written addendum or exhibits to it

constitute(s) the entire contract between Park District and JMB with respect to the subject matter hereof and supersede(s) any prior agreements between them whether written or oral, and may be changed, modified or amended only by mutual written agreement executed by Park District and JMB.

Section 23 – Force Majeure: The Parties shall not be liable to each other or any third party for any delay or failure in performing the obligations under this Agreement, or for any loss or damage resulting therefrom, due to causes beyond their control, including without limitation, acts of God, the public enemy, major equipment failures, pandemic, epidemic, inability to obtain materials or services, wars, explosions, accidents, riots, labor disputes, strikes, lockouts, civil commotion or insurrection, fires, quarantine, shelter-in-place order, pestilence, natural catastrophes or disasters (including without limitation, unusually severe weather), economic fluctuations, non-availability of electric power or other necessary energy sources, or legal or government laws, regulations, orders, requirements, or demands. In the event of a delay or failure caused by such circumstances, the date of delivery or performance shall be excused and extended not to exceed the duration of the failure or delay, provided that, the Party affected by such delay is using commercially reasonable efforts to mitigate or eliminate the cause of such delay or its effects. Each Party shall promptly notify the other in writing of any delay or failure in and the effect upon its performance as to time for anticipated resumption of performance of the obligations under this Agreement.

Champaign Park District
Attn: Executive Director
706 Kenwood Road

Champaign, IL 61821

JMB Industries, Inc.
Attn: Jedi Brown

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed effective as of the day and year first above written.

Champaign Park District,
a municipal corporation

JMB Industries, Inc.,
a For-Profit Corporation

By: _____

By: _____

Name: _____
(print name)

Name: _____
(print name)

Title: _____

Title: _____

Date: _____

Date: _____

Champaign Park District / JMB Industries, Inc.

Exhibit A

SAC Menu

Rev 1.0 Feb 2024

Main Entrees

Sub Sandwiches

| | |
|-----------------------------|---------|
| Ham | \$6.50 |
| Roast Beef | |
| Turkey | |
| Sub Sandwich +Chips + Drink | \$10.00 |

7" Pizza

| | |
|---------------|--------|
| Cheese | \$7.00 |
| Pepperoni | |
| Pizza + Drink | \$9.00 |

Classics

| | |
|----------------------------------|--------|
| Hot Dog | \$4.25 |
| Hot dog Meal (Chips+ 22oz Drink) | \$8.00 |
| Soft Pretzels + cheese | \$4.00 |
| Nacho + Cheese | \$3.50 |

Drinks

| | |
|----------------------|--------|
| 16 oz Fountain Drink | \$2.25 |
| 22 oz Fountain Drink | \$2.75 |
| Bottle Water | \$2.00 |
| Gatorade | \$3.00 |

Sides

Main

| | |
|-------------|--------|
| Chips | \$2.00 |
| Candy | \$2.00 |
| Fruit Bowls | \$2.00 |

Frozen

| | |
|------------------------|--------|
| Shaved Ice- Flower cup | \$4.00 |
| Hand Scooped Ice cream | \$4.00 |
| Giant Popsicles | \$2.00 |



REPORT TO PARK BOARD

FROM: Sarah Sandquist, Executive Director

DATE: March 27, 2024

SUBJECT: Virginia Theatre Lighting Console and Peripherals

Background

When the Champaign Park District took ownership of the Virginia Theatre in 2000, the facility had limited professional lighting equipment for use during concerts, dance, comedy, and theatrical events. The lighting needs of both local and touring productions were met by leasing professional stage lighting equipment, including a central lighting control console, on a per-performance basis. In 2011, the park district purchased a professional lighting console for use at the Virginia—an ETC ION 2000—which at the time appeared in most riders as a model accepted by touring attractions.

After thirteen years of service, the theatre's ION 2000 lighting console has been discontinued by its manufacturer and is no longer being supported with software patches or updates. The ION's features have also been surpassed by recent developments in stage lighting technology, with recent, more advanced consoles like ETC's EOS APEX 20 and MA Lighting's grandMA3 being requested on most tour riders.

After an extensive literature search and review by lighting engineers working at the Virginia Theatre, the Krannert Center for the Performing Arts, and the State Farm Center, staff have recommended the ETC EOS APEX 20 as an appropriate choice to replace the theatre's aging ION lighting console.

The ETC APEX 20 is a full-featured, industry-standard professional lighting console accepted by a majority of touring attractions. And since it is part of the same ETC product line as the theatre's long-standing ION console, it uses the same intuitive operating system and will not require significant re-training of operators.

First introduced in 2022, the APEX 20 has been positioned by ETC as its "flagship" product that can be enhanced over time with a growing list of peripherals to allow for further customization, including the possibility of integrating video control into the sound console. The APEX 20 also provides for a range of flexible programming options such as remote tablet access to allow for quick, on-the-go changes to lighting throughout the production space—a feature which was included in the basic package of peripherals recommended here by staff.

Prior Board Action

At their February 8, 2023, meeting, the Champaign Park District Board of Commissioners approved a Capital Plan for FY24 that included the purchase of a new lighting control console for the Virginia Theatre, with an estimated expense of \$75,000.00.

Bid Results

An invitation to bid was published in *The News-Gazette* and bids were opened and read aloud at the park district's Bresnan Meeting Center on Tuesday, March 19, 2024, at 1:00 P.M.. Eight bids were received, and the results were as follows:

| Bidder | Bid Amount |
|---|--------------------|
| Advance Audio & Lighting Systems, Inc., Peoria, IL | \$83,600.00 |
| TC Furlong, Inc., Lake Forest, IL | \$85,065.34 |
| Clearwing Systems Integration, LLC, West Allis, WI | \$84,266.00 |
| Theatrical Lighting Connection, Burr Ridge, IL | \$82,500.00 |
| Barbizon Light of New England, DBA Barbizon Chicago, IL | \$82,750.00 |
| Full Compass Systems, Inc., Madison, WI | \$78,782.00 |
| Taza Construction, DBA Tiles in Style, LLC, South Holland, IL | \$116,900.00 |
| Grand Stage Lighting, Chicago, IL | \$89,620.00 |

Full Compass Systems, Inc., Madison, WI, was deemed the low, responsible bidder.

Budget Impact

The Champaign Park District Board of Directors previously authorized the expenditure of \$75,000.00 in FY24 Capital funds for this project. Since the low bid in this case came in higher than the original estimate, the additional amount that the park district would be responsible for is \$3,782.00.

Recommended Action

Staff recommends that the Board accept the bid and authorize the Executive Director to purchase ETC ION APEX 20 Lighting Console and Peripherals for the Virginia Theatre from the low, responsible bidder, Full Compass Systems, Inc., Madison, WI, in the amount of \$78,782.00.

Prepared by:

Steven Bentz
Director, Virginia Theatre

Reviewed by:

Sarah Sandquist
Executive Director



REPORT TO PARK BOARD

FROM: Sarah Sandquist, Executive Director

DATE: March 20, 2024

SUBJECT: Tivity Health Services, LLC (Silver Sneakers) Amended Agreement

Background

The Champaign Park District (Park District) entered into an agreement to be a location partner for the Leonhard Recreation Center (Leonhard) in 2016. The Park District has consistently had 200-300 active Silver Sneakers memberships at Leonhard. Staff submit monthly membership sign-in data and are reimbursed by Tivity Health at \$2.50 per visit with a \$20 cap per month. Based on the success at Leonhard and public comment asking for Silver Sneakers at the Sholem Aquatics Center staff approached Tivity about adding the Martens Center and Sholem Aquatics Center as approved location partners. Staff also sought an increased rate of compensation per visit as well as an increased monthly rate cap.

Budgetary Impact

The additional location partnerships of the Martens Center and Sholem Aquatics Center (Sholem) are expected to have a positive impact on the overall budget, but the full impact is unknown. Staff expect a positive impact on Martens Center memberships and attendance, but it may not have a large impact on Sholem as several seniors who normally purchase a senior membership at \$90 for the season will get the membership at no cost to them and may attend less than 10 times a month, leading to lower revenue in those cases. However, it is a valuable service to the community and could easily attract new users and increased revenue from previous non-participants, offsetting possible revenue reductions for other seniors at Sholem. As for Leonhard, it will also have a positive impact as an increased per visit reimbursement of \$3 and an increased cap of \$30 will significantly boost Tivity revenues. Overall, staff view this as a service opportunity and believe it could have a positive impact on the overall budgets.

Recommendation

Staff recommends approval of an amendment to the agreement with Tivity Health Services, LLC to add the Martens Center and Sholem Aquatics Center and an increased rate per visit and an increased monthly cap.

Prepared by:

Jimmy Gleason
Director of Facilities & Technology

Reviewed by:

Sarah Sandquist
Executive Director

Confidential

TIVITY HEALTH PARTNER LOCATION AGREEMENT

This Tivity Health Partner Location Agreement (this “**Agreement**”) is between **TIVITY HEALTH SERVICES, LLC** (“**Tivity Health**”), and the (“**Facility**”) named below. This Agreement is effective as of March 1, 2024 (“**Effective Date**”). Facility desires that it and its other locations listed on **Exhibit A-1** be included as a member of Tivity Health’s network of locations for the purposes of fitness memberships and/or offering Tivity Health’s programs, and Tivity Health desires Facility to be a member of Tivity Health’s network.

Facility. The undersigned Facility and any additional participating locations of Facility as mutually agreed to and set forth in **Exhibit A-1**, which have entered into this Agreement with Tivity Health to be part of its Tivity Health Network.

Facility Contact. Facility has designated the person named on **Exhibit A-2** as authorized to represent Facility in communicating with Tivity Health about this Agreement.

Pricing. Tivity Health will pay Facility the selected program fees in **Attachment A**.

Programs. Facility will offer each Tivity Health program marked in **Attachment A**.

Term. The term of this Agreement runs from the Effective Date through December 31, 2028 (“**Term**”). Either party may terminate this Agreement upon 120 days’ prior written notice of the expiration of the Term.

Terms & Conditions. This Agreement will be governed by the Standard Terms and Conditions attached hereto and incorporated by reference herein.

The Tivity Health materials on the Fitness Provider Portal (the “**Portal**”) are incorporated by reference as an integral part of this Agreement.

This Agreement supersedes any prior agreements and represents the entire understanding and agreement between the parties regarding the subject matter of this Agreement.

Tivity Health and Facility each sign below to agree to be bound to the terms of this Agreement as of the Effective Date.

TIVITY HEALTH SERVICES, LLC

Champaign Park District, a municipal corporation
Name of Facility

Signature

Signature

Tivity Health Printed Name

Sarah Sandquist _____
Printed Name

Tivity Health Title

Executive Director _____
Title

Date

Date

Notices, Utilization Payment, Programs and Pricing

1. Notices to Facility and Tivity Health.

Facility Contact: Attached [Exhibit A-2](#)

Tivity Health Contact: Tivity Health PL Contracting Department
4031 Aspen Grove Drive, Suite 250
Franklin, TN 37067
Email: PLContracting@tivityhealth.com

2. Program Utilization Payment.

- a) Program Utilization Payment for Selected Tivity Health Programs. Tivity Health shall compensate Facility based on Program Participant Visits, with a maximum cap payment per Program Participant per month. As used herein, the term (“**Program Visit**”) shall mean one distinct occasion, recorded and reported by Facility in accordance with procedures specified in the Reference Guide, during which a Program Participant enters Facility to enroll in or use the Program. Tivity Health shall not compensate Facility for more than one Program Visit per day. (“**Program Participant**”) shall mean a Program Participant, who, after completing the Program enrollment, has used the Program at a facility in the Tivity Health Network at least once in a given month.
- b) Payment Schedule. Payment shall be processed for direct deposit by Tivity Health by the last day of the month following the month in which Program Visits occurred (the “**Following Month**”), provided Tivity Health receives Facility’s monthly utilization data by the fifth (5th) day of the Following Month. In the event utilization data is not received in a timely manner, payment may be delayed. Payment for monthly utilization received after the last day of the Following Month will be denied for non-timely filing and will not be eligible for reimbursement or appeal. Appeals must be brought to the attention of Tivity Health within thirty (30) days of receipt of payment; appeals brought at a later date will not be eligible for review.

3. **Programs and Pricing.** A description of each Program appears on the Portal: <https://fitness.tivityhealth.com>

- SilverSneakers®** Fitness Program Offering Basic Program Participant Access
\$5.00 per Program Visit up to \$30.00 per Program Participant per month.
- Prime®** (Fully Subsidized for Members 18+)
\$3.50 per Program Visit up to \$30.00 per Program Participant per month.
- Prime Private Brand®** (Commercial Member Pay Program)
\$3.50 per Program Participant Visit up to \$30.00 per Program Participant per month.

STANDARD TERMS AND CONDITIONS

- 1. Definitions. All terms not defined herein will have the meanings given to them in the Partner Location Agreement between Tivity Health and Facility (the “**Agreement**”).

a) **“Confidential Information”** means this Agreement, the identity of any Tivity Health customer, Participant information and information a recipient should reasonably understand to be confidential given the nature of such information, including, without limitation, any Tivity Health IP.

b) **“Sponsoring Organization”** means any organization, employer group, health plan or subset thereof that is contracted with Tivity Health to provide the Program to its members and whose members may therefore utilize Facility in accordance with the terms of this Agreement. Facility shall provide the Program to eligible Members of all Sponsoring Organizations. Sponsoring Organization information shall be available to Facility, and such Sponsoring Organization information shall be incorporated herein by reference.

c) **“Participant”** means a Sponsoring Organization Program Participant, employee, dependent or other person eligible for the Program, determined by the Participant verification process outlined in the Reference Guide.

d) **“Program”** means each Tivity Health program elected in the Agreement and as described on the Portal.

e) **“Reference Guide”** means the procedures and guidelines set forth on the Portal for participation in the Tivity Health network.

f) **“Tivity Health IP”** means any and all intellectual property associated with the Program and tangible embodiments thereof, including, without limitation: the Portal, the Reference Guide; Program descriptions, processes and know-how; Tivity Health content on the Portal; and all data regarding activity at the Facility, such as utilization reports.

2. **Facility Responsibilities.** In exchange for the compensation to be paid by Tivity Health, Facility shall perform the following services:

a. **Program Implementation Process.** To prepare for Program commencement, Facility agrees to participate in the following 1) coordination with Tivity Health of electronic reporting containing the required data elements; 2) Tivity Health-scheduled and led training; and 3) Tivity Health’s evaluation of Facility to certify Facility’s preparedness to provide Program (the date by which each of these has been completed, the Ready Date.”)

b. **Staffed Hours.** Facility shall be appropriately staffed in accordance with professionally recognized standards of fitness programs a minimum of six (6) hours per day, Monday through Friday.

c. **Program Enrollment.** Facility shall enroll Participants in the Program in accordance with the

protocol defined in the Reference Guide or other protocol mutually agreed between the Parties.

d. **Reporting Obligations of Facility.** Facility shall report Program utilization to Tivity Health on a monthly basis. Program utilization reporting shall consist of all 1) Program forms completed during the previous month as applicable; and 2) visits for the month. Facility shall prepare a report of daily visits and utilization from the month summarizing activity and containing the required data elements and submit it electronically to Tivity Health no later than the fifth (5th) day of the following month. The required file format, data elements and submission options are defined in the Reference Guide. The Parties to this Agreement shall work cooperatively to establish correct and acceptable electronic monthly utilization data reporting; Tivity Health may provide technical support to Facility if necessary.

e. **SilverSneakers® Program Advisor.** Facility shall designate one staff member as the SilverSneakers Program Advisor, who shall serve as a liaison to Tivity Health and as a resource person for SilverSneakers Participants utilizing the Tivity Health Network and is knowledgeable concerning all services provided by Facility to Participants.

f. **Guest Pass Program.** Facility shall provide Program services to persons presenting a Tivity Health guest pass. Properly documented guest visits will be counted the same as a Participant visit for purposes of calculating Facility’s compensation.

g. **Reference Guide.** Facility must comply with the Reference Guide to remain a part of Tivity Health’s network.

h. **Access to Program at No Charge.** Facility will provide all Participants access to the Program at no charge to the Participants.

i. **Tivity Health Network Reciprocity.** Facility will ensure that all of Facility’s locations listed in the Agreement allow access to all Participants.

j. **Membership Conversion.** Upon the Effective Date, Facility will inactivate any existing gym/facility membership relationship a Participant may have with Facility, which inactivation will be for the duration of the Agreement. Facility will not collect any monthly dues, cancellation fees, or other fees during the inactivation period. Upon termination of the Agreement or the termination of a Participant’s membership with a Tivity Health customer, Facility may re-activate that Participant’s inactivated Facility membership.

k. **Portal.** Facility’s participating locations will create and maintain user accounts on the web based Tivity Health Fitness Provider Portal. Facility shall utilize the Tivity Health Fitness Provider Portal to verify

Participant eligibility and to obtain and access Tivity Health materials, including Sponsoring Organization information, training materials, Program forms, Program reports, and the Reference Guide.

l. Communications. Facility will coordinate all external communications through Tivity Health. Facility will immediately notify Tivity Health of all external inquiries regarding any Tivity Health Program, Tivity Health, or a Tivity Health customer.

m. Return of Materials. Facility will promptly return all Tivity Health Program materials upon termination of the Agreement or at Tivity Health's request.

n. Fraud, Waste and Abuse Training. Applicable Facility personnel will complete fraud, waste and abuse training as required by the Center for Medicare and Medicaid Services and provide confirmation of completion of same on the Portal.

o. Insurance. Facility will maintain commercially reasonable levels of general liability insurance in order to satisfy Facility's obligations to Tivity Health under this Agreement and as is reasonable and appropriate and industry-standard given Facility's business operations. Tivity Health represents that it does and will maintain commercially reasonable levels of general liability insurance under this Agreement and as is reasonable and appropriate and within industry-standards recognizing the nature of Tivity Health's business operations.

3. Use of Trademarks, Logos, and Copyrighted Materials. Each party grants the other a limited and non-exclusive right to use the other's trademarked or service-marked name, logo, identity, format, and materials solely for use for the purposes outlined in this Agreement (the "**Marks and Materials**"); provided, any use by Facility must be approved in advance and in writing by Tivity Health. Upon termination of the Agreement the Parties will cease all use, advertising, marketing, and referencing of each others' Marks and Materials. Nothing in the Agreement grants either party any right, title or interest in or to the Marks and Materials of the other party. All use by Facility of Tivity Health's Marks and Materials (including goodwill) will be for the sole benefit of Tivity Health.

4. Tivity Health IP/Facility IP. Tivity Health is the sole and exclusive owner of any and all Tivity Health IP, and nothing in the Agreement will alter Tivity Health's ownership rights in the Tivity Health IP whatsoever. Facility may not sell, license or otherwise transfer the Tivity Health IP.

Facility is the sole and exclusive owner of any and all Facility IP, and nothing in the Agreement will alter Facility's ownership rights in the Facility IP

whatsoever. Tivity Health shall not sell, license or otherwise transfer the Facility IP.

5. Disagreements. If the parties have a disagreement, they will work in good faith to resolve it. All unresolved disagreements will be initially submitted to mediation for resolution. If the parties are unable to resolve any disagreement through negotiation or mediation, they shall have the right to seek resolution of any such disagreement by litigation. The parties shall not initiate or undertake any class action type of litigation against each other.

6. Research Studies. Facility must seek prior written approval (which Tivity Health may decline in its sole discretion) from Tivity Health before undertaking any research or clinical study of Participants or Programs. Facility will provide study findings and results to Tivity Health prior to any publication or presentation of same. Tivity Health may withhold approvals hereunder in its sole discretion.

7. Compensation. Tivity Health will pay Facility the fees and rates set forth in the Agreement. Facility will be responsible to pay its own taxes on any payment received from Tivity Health.

8. Termination.

a. Early Termination. Notwithstanding any other provision of this Agreement, either party may terminate this Agreement at any time upon notice to the other of 1) closure of Facility, resulting in denial of Program services to Participants (for clarification, a single location closure by Facility does not grant Facility the right to terminate the Agreement in its entirety); 2) fraudulent Program utilization reporting; or 3) Tivity Health's reasonable determination that the health or safety of Participants may be in jeopardy if this Agreement is not terminated.

b. Bankruptcy. If at any time there is filed by or against a party to the Agreement a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver, trustee, or conservator of all or a portion of the party's property, or if a party makes an assignment for the benefit of creditors, and if such action is not dismissed after 90 calendar days, the Agreement may be immediately terminated by the other party.

c. Material Breach. If either party breaches a material term or condition of the Agreement, the non-breaching party may terminate the Agreement on notice to the other party specifying the nature of the breach as long as the breach is not cured within 30 days after such notice.

d. Default. Tivity Health may at its sole discretion and without limiting its other remedies withhold payment of any amounts otherwise due to Facility if Facility commits an act of fraud or commits a material

breach of the Agreement. Facility may at its sole discretion and without limiting its remedies terminate this Agreement in the event Tivity Health commits an act of fraud or a material breach of this Agreement, such as, and including without limitation, inappropriately withholding payment for amounts otherwise due.

e. Immediate Termination. Tivity Health may immediately terminate the Agreement upon notice to Facility in the event of (i) Facility closure; (ii) fraudulent reporting of Program utilization by Facility; (iii) Tivity Health's determination that a Participant's health or safety may be at risk; or (iv) either party or any of its owners, employees, agents, or affiliates have been convicted of Medicare fraud or appear on any state or federal government exclusion list, including, without limitation, the System for Award Management or the Office of Inspector General's List of Excluded Individuals and Entities.

9. Confidentiality. During the Term and at all times thereafter, Facility will endeavor to not divulge to anyone or use in any way any Confidential Information. However, the parties understand and agree that Facility is a public body which is subject to the laws of the State of Illinois, including without limitation, its Freedom of Information Act and Open Meetings Act. Accordingly, pursuant to those Acts and other laws governing such governmental bodies, Facility may be required by appropriate requests, court order, subpoena, civil investigative demand or other binding document to provide such Confidential Information. In the event of receipt of any of the foregoing, Facility will inform Tivity Health of such document(s) (if permitted by law) in order for Tivity Health to protect its interests.

10. Participant Contact. Facility agrees not to contact Participants during the Term of this Agreement regarding business matters of the Program, including, without limitation, switching health plans, disenrolling, enrolling with other health plans or similar entities, or contracting directly with Facility. Facility will not dissuade Participants from engaging in any Tivity Health Program.

11. Notices. All notices and other communications under this Agreement must be in writing, sent to the applicable contact listed in the Agreement, and will be deemed to have been duly given, made and received when sent by (a) electronic mail or (b) hand delivery, including by a recognized courier service.

12. Program Claims: In no event shall Tivity Health, together with any affiliates, be liable for i) injuries sustained by Participants as a result of the Participant's engagement in the Program or any other activities undertaken in or sponsored by

Facility or ii) the Facilities failure to comply with applicable laws.

13. Indemnification. Facility will indemnify, defend, and hold harmless Tivity Health, its Affiliates and their respective officers, directors, shareholders, employees, and representatives from any and all claims, demands, suits, liabilities, damages, obligations, and expenses (including without limitation reasonable attorneys' fees) asserted by third parties against Tivity Health arising out of: (a) the negligence or willful misconduct of Facility or its officers, directors, employees, agents or affiliates; or (b) Facility's material breach of this Agreement. Tivity Health will indemnify, defend, and hold harmless Facility, its Affiliates and their respective officers, directors, shareholders, employees, and representatives from any and all claims, demands, suits, liabilities, damages, obligations, and expenses (including without limitation reasonable attorneys' fees) asserted by third parties against Facility arising out of: (a) the negligence or willful misconduct of Tivity Health, its Affiliates or their officers, directors, employees, agents; or (b) Tivity Health's material breach of this Agreement. Notwithstanding the foregoing, the maximum liability of either Party under this Agreement for any indemnity obligations shall not exceed \$500,000 in the aggregate. To receive the indemnity set forth in this Section, the indemnified party must promptly notify the indemnifying party of a claim or suit and provide reasonable cooperation and authority to defend and/or settle the claim or suit. The indemnifying party shall not enter into any settlement agreements related to the indemnity that have an impact, monetary or otherwise, on the indemnified party, without receiving the prior written consent of the indemnified party, with such consent not to be unreasonably withheld. Notwithstanding the foregoing, the indemnifying party's obligations shall be comparatively reduced to the extent that it is finally determined by a court of competent jurisdiction that an indemnification claim is caused in part by the acts or omissions of the indemnified party. For purposes herein, the term "**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with a Party, where "control" means either (i) the ownership of, or the power to vote, at least fifty percent (50%) of the voting stock, shares or interests of any entity, or (ii) the right to exercise management control, whether through ownership interest, contract, or otherwise. Cooperation in Defense. Tivity Health and Facility agree that, to the extent permitted by law, they will cooperate with one another in the defense of any claim arising from any acts of their respective officers, directors, commissioners, shareholders, employees, agents, representatives, or affiliates and will give one

another immediate written notice of any claims arising in relation to the Agreement.

14. Miscellaneous.

a. Compliance with Federal and State Rules and Regulations. Facility and Tivity Health will comply with all applicable federal and state rules and regulations regarding services provided to Participants. Tivity Health understands, acknowledges, and agrees that Facility's compliance obligations may be limited or expanded to the extent and as applicable for entities which are governmental bodies.

b. Business License and Regulatory Standards. Facility will hold an active and unrestricted business license as required by law and meet occupational health and safety requirements and regulatory standards in the state and jurisdiction in which Facility operates. Severability. In the event any provision of the Agreement be determined by any court of competent jurisdiction to be illegal, invalid or unenforceable in any respect, in whole or in part, the offending provisions will be stricken and will not affect the enforceability of the other provisions.

c. Amendment of Agreement to Comply with Law. Tivity Health may amend this Agreement to comply with applicable law upon 60 days' prior written notice to Facility. Facility may terminate this Agreement during within 60 days after receiving written notice of such amendment if the amendment would, have a material adverse effect upon it.

d. Applicable Law. The Agreement is governed by the laws of the State of Illinois, without giving effect to its conflicts of law's provisions, and each party submits to the exclusive jurisdiction of the courts of the State of Illinois.

e. Waiver. Failure to Insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement, shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of the right or power at all or any other times.

f. Assignment – Binding Effect. Neither party nor any subsidiary, successor, partner, employee, agent, or affiliate shall assign or delegate any of their rights or responsibilities under this Agreement without the prior written consent of the other party.

g. Independent Contractors. Tivity Health acknowledges and agrees that neither Tivity Health nor any of its employees, representatives, or agents is an employee of the Facility, is not entitled to any benefits or protections afforded employees of the Facility, nor bound by any obligations of employees of the Facility. Nevertheless, Tivity Health will not act contrary to the policies of the Facility. Tivity Health understands and fully agrees that Tivity Health will not be insured under provisions of the unemployment compensation insurance of the Facility or the workers' compensation insurance of the Facility. It is also understood that neither Tivity Health nor any of its employees, representative, or agents is protected as an employee or as a person acting as an agent or employee under the provisions of the general liability insurance of the Facility and, therefore, Tivity Health will be solely responsible for its own acts or omissions, and those of Tivity Health's employees and agents, if any.

Tivity Health acknowledges and agrees that it is solely responsible to pay all applicable federal, state, and local income and withholding tax obligations or contributions imposed pursuant to Social Security, unemployment insurance and worker's compensation insurance on behalf of Tivity Health and those employees and agents, if any, employed by it.

Sale of Business/Transfer of Assets. Facility will notify Tivity Health in writing at least 90 days before it sells or transfers all or substantially all of its assets or business

h. Survival. Sections 12 through 15 will survive termination of the Agreement, regardless of the reason for termination.

i. Counterparts; Entity Authorization. This Agreement may be executed in any number of counterparts, each of which when taken together shall be deemed to be one and the same instrument. The undersigned signatories represent that they are authorized to execute this Agreement for their respective entities and that all entity action necessary for such authorization has occurred. The parties may sign a facsimile or pdf. version of this Agreement and such facsimile or .pdf version of the party's signature shall be considered an original.

EXHIBIT A-1

FACILITY INFORMATION

The information in the box below is intended for marketing purposes. Please confirm that it is accurate.

Facility Name: Champaign Park District (Leonhard Recreation Center)

Physical Address: 2307 W Sangamon Dr., Champaign, IL 61821

Mailing Address:
(if different from Physical Address)

General Email: david.galvin@champaignparks.com

Phone Number: (217) 398-2550

Web Site Address: champaignparks.com

***To enable marketing of amenities and services are marketed, please designate your basic amenities below and all amenities upon initial log in to the Fitness Provider Portal.**

| Amenity/Program | Offered as part of basic membership at no additional cost to Members |
|--|--|
| Cardiovascular Equipment | X |
| Group Exercise/Aerobics Area | |
| Hot Tub/Whirlpool | |
| Resistance Training Equipment | |
| Steam and/or Sauna | |
| Swimming Pool – Seasonal (not available throughout the year) | |
| Swimming Pool – Year-Round | |
| Track and Open Gym | X |

TIVITY HEALTH PROGRAM ADVISOR: This individual shall be responsible for scheduling training, coordinating with the Account Executive, and will need access to Program Participant records.

Name: David Galvin

Title: Membership Facilities Manager

Phone: (217) 819-3986

Email: david.galvin@champaignparks.com

TECHNICAL COORDINATOR: This individual shall be responsible all technical aspects of monthly Program Participant utilization tracking and data reporting. The Technical Coordinator shall obtain management approval for establishing a reporting method for all Facilities in Exhibit A-1 to this Agreement.

Name: Misty Stocking

Title: Guest Services Manager

Phone: (217) 819-3885

Email: misty.stockings@champaignparks.org

EXHIBIT A-1

FACILITY INFORMATION

The information in the box below is intended for marketing purposes. Please confirm that it is accurate.

Facility Name: Champaign Park District (Martens Center)

Physical Address: 1515 N. Market St., Champaign, IL 61821

Mailing Address: _____
(if different from Physical Address)

General Email: david.galvin@champaignparks.com

Phone Number: (217) 819-3834

Web Site Address: champaignparks.org

***To enable marketing of amenities and services are marketed, please designate your basic amenities below and all amenities upon initial log in to the Fitness Provider Portal.**

| Amenity/Program | Offered as part of basic membership at no additional cost to Members |
|--|--|
| Cardiovascular Equipment | X |
| Group Exercise/Aerobics Area | |
| Hot Tub/Whirlpool | |
| Resistance Training Equipment | |
| Steam and/or Sauna | |
| Swimming Pool – Seasonal (not available throughout the year) | |
| Swimming Pool – Year-Round | |
| Track and Open Gym | X |

TIVITY HEALTH PROGRAM ADVISOR: This individual shall be responsible for scheduling training, coordinating with the Account Executive, and will need access to Program Participant records.

Name: David Galvin

Title: Membership Facilities Manager

Phone: (217) 819-3986

Email: david.galvin@champaignparks.com

TECHNICAL COORDINATOR: This individual shall be responsible all technical aspects of monthly Program Participant utilization tracking and data reporting. The Technical Coordinator shall obtain management approval for establishing a reporting method for all Facilities in Exhibit A-1 to this Agreement.

Name: Misty Stocking

Title: Guest Services Manager

Phone: (217) 819-3885

Email: misty.stockings@champaignparks.org

EXHIBIT A-1

FACILITY INFORMATION

The information in the box below is intended for marketing purposes. Please confirm that it is accurate.

Facility Name: Champaign Park District (Sholem Aquatic Center)

Physical Address: 2205 Sangamon Dr., Champaign, IL 61821

Mailing Address:

(if different from Physical Address)

General Email: ryan.hays@champaignparks.org

Phone Number: (217) 398-2376

Web Site Address: champaignparks.org

***To enable marketing of amenities and services are marketed, please designate your basic amenities below and all amenities upon initial log in to the Fitness Provider Portal.**

| Amenity/Program | Offered as part of basic membership at no additional cost to Members |
|--|--|
| Cardiovascular Equipment | |
| Group Exercise/Aerobics Area | |
| Hot Tub/Whirlpool | |
| Resistance Training Equipment | |
| Steam and/or Sauna | |
| Swimming Pool – Seasonal (not available throughout the year) | X |
| Swimming Pool – Year-Round | |
| Other (Please Specify) | |

TIVITY HEALTH PROGRAM ADVISOR: This individual shall be responsible for scheduling training, coordinating with the Account Executive, and will need access to Program Participant records.

Name: Ryan Hays

Title: Aquatics and Tennis Manager

Phone: (217) 819-3985

Email: ryan.hays@champaignparks.org

TECHNICAL COORDINATOR: This individual shall be responsible all technical aspects of monthly Program Participant utilization tracking and data reporting. The Technical Coordinator shall obtain management approval for establishing a reporting method for all Facilities in Exhibit A-1 to this Agreement.

Name: Donald Holm

Title: Aquatics and Tennis Coordinator

Phone: (217) 819-3995

Email: Donald.holm@champaignparks.org

EXHIBIT A-2

CONTRACT ADMINISTRATOR

The Contract Administrator is an authorized signer on behalf of the company/organization and shall: be responsible for all legal correspondence and Notices regarding the Agreement, have access to payment information for all Facilities in Exhibit A-1 to this Agreement, and be responsible for setting up Tivity Health Fitness Provider Portal accounts for Facility staff.

Name: Jimmy Gleason
Title: Director of Facilities
Mailing Address: 706 Kenwood Rd. Champaign, IL 61821
Phone: (217) 819-3835
Email: jimmy.gleason@champaignparks.org

UNDER REVIEW

PROGRAM DESCRIPTIONS

SilverSneakers® Fitness Program – Basic Participant Access Program Description:

In exchange for the compensation to be paid by Tivity Health, Facility shall offer the Program to Participants of the Sponsoring Organization as a fully subsidized program for Medicare, Group Retirees and Older Adults that includes a basic fitness membership, which may include other Tivity Health services, for Participants provided through a network of facilities; also included in the Program are all facets presented in the Terms and Conditions section of the Partner Location Agreement. Program brands include SilverSneakers® Fitness program, Tivity Health ACCESS, and other brand names for the Mature Market Fully Subsidized Program communicated to Facility by Tivity Health from time to time.

Prime® (Fully Subsidized for Participant) Program Description:

In exchange for the compensation to be paid by Tivity Health, Facility shall offer the Program to Participants of the Sponsoring Organization as a Commercial Fully Subsidized Program; The Program includes basic fitness membership services for Participants provided through a network of facilities; also included in the Program are all facets presented in the Terms and Conditions section of the Partner Location Agreement. Program Brands include Prime®, Prime MCA, and other brand names for the Commercial Fully Subsidized Program communicated to Facility by Tivity Health from time to time.

- a) Introductory Orientation for Prime Participants. Facility shall offer the Program to all Participants identified by Tivity Health as eligible for the Program. In addition to a basic fitness membership at no cost to the Participant, Facility shall provide Participants with an added value program component (i.e., a thirty (30) minute personalized orientation session or personal training session).

Prime Private Brand® (Participant Pay Program) Program Description:

In exchange for the compensation to be paid by Tivity Health, Facility shall offer the Program to Participants of the Sponsoring Organization a Commercial Participant Pay Program; also included in the Program are all facets presented in the Terms and Conditions section of the Partner Location Agreement. For purposes of this Program, Participant Pay is defined as a monthly payment made by Participant to Tivity Health to participate in the Program. Program brands include Prime PB and other brand names for the Commercial Participant Pay Program communicated to Facility by Tivity Health from time to time.

- a) Introductory Orientation for Prime Participants. Facility shall offer the Program to all Participants identified by Tivity Health as eligible for the Program. In addition to a basic fitness membership at no cost to the Participant, Facility shall provide Participants with an added value program component (i.e., a thirty (30) minute personalized orientation session or personal training session).



REPORT TO PARK BOARD

FROM: Sarah Sandquist, Executive Director

DATE: March 7, 2024

SUBJECT: West Side Park Mobility Upgrades

Background

In the summer of 2022, mobility advocates petitioned the Park District to improve pathways and circulation at West Side Park. Consequently, Capital Improvement Plan (CIP) set \$50K for FYE24 and another \$50K for FYE25 for the work. The FYE24 amount rolled over to combine with this year's money to execute a more efficient construction project.

Prior Board Action

December 13, 2023 Regular Board Meeting—Board approved FYE25 Capital Budget.

Bid Results

Sealed bids were opened 10:00am Wednesday, March 20, 2024, with results as shown:

| Bidding Contractor | Bid (\$) |
|----------------------------------|-----------------|
| A + A Concrete, Urbana IL | 97,475.00 |
| Mid Illinois Concrete, Urbana IL | 123,425.00 |
| Duce Construction, Champaign IL | 129,500.00 |
| Concrete Inc, Thomasboro IL | 133,756.00 |
| Cross Construction, Urbana IL | 169,800.00 |
| A + R Services, Urbana IL | 202,450.00 |

Budget Impact

Project 24019 amount is \$110,000 for "West Side Park Sidewalk Improvements".

Recommendation

Staff recommends awarding the contract to lowest bidder, A + A Concrete of Urbana IL for \$97,475.00 and to authorize the Executive Director to enter into the contract. *Timeline*—Start construction next month with completion by end of June 2024.

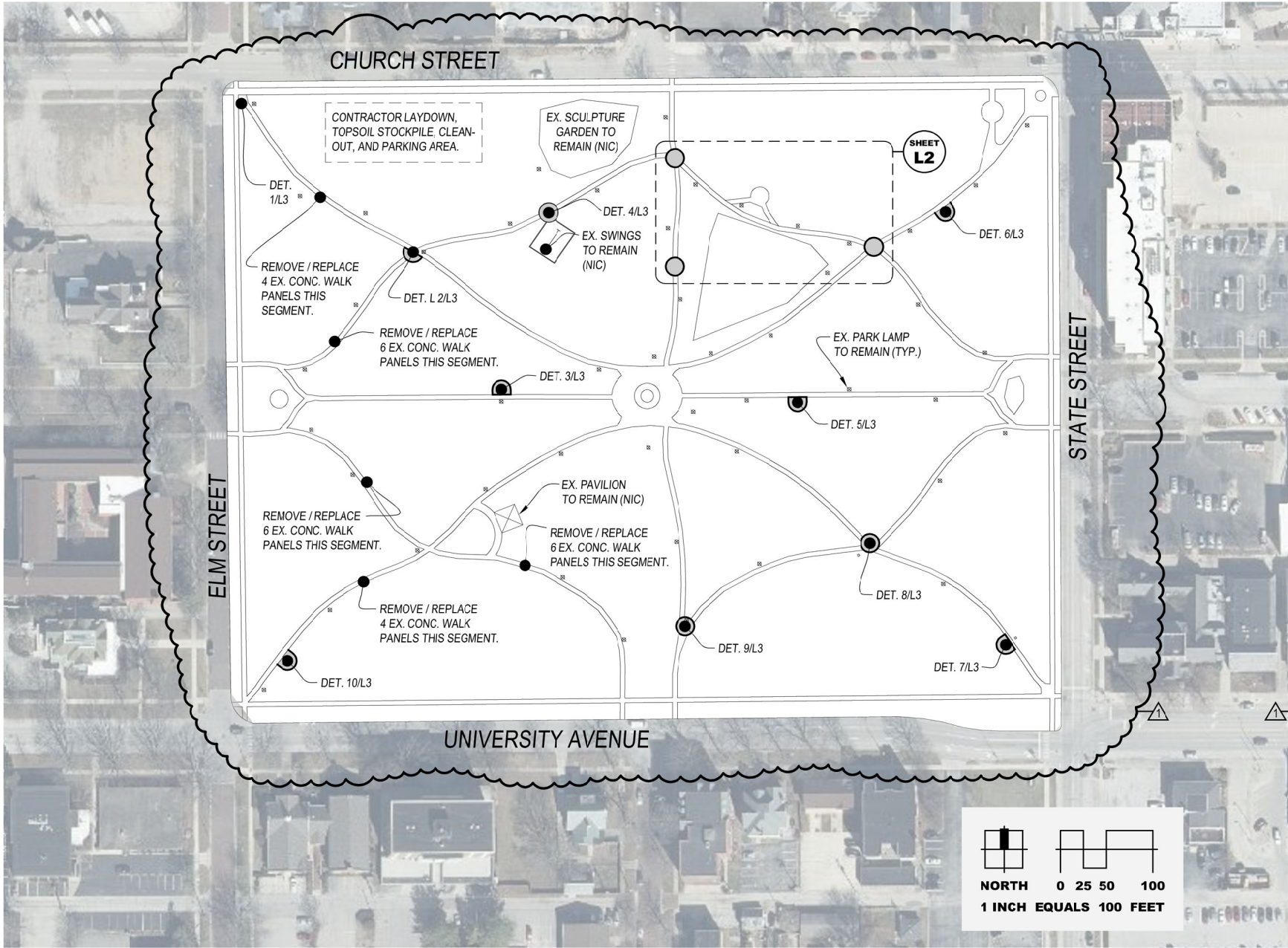
Prepared by:

Reviewed by:

Andrew Weiss
Park Planner

Dan Olson
Director of Operations and Planning

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Bresnan Meeting Center
706 Kenwood Road
Champaign IL 61821

217 398 2550
champaignparks.com

west side park mobility upgrades
cpd west side park
400 w university avenue
champaign illinois 61820

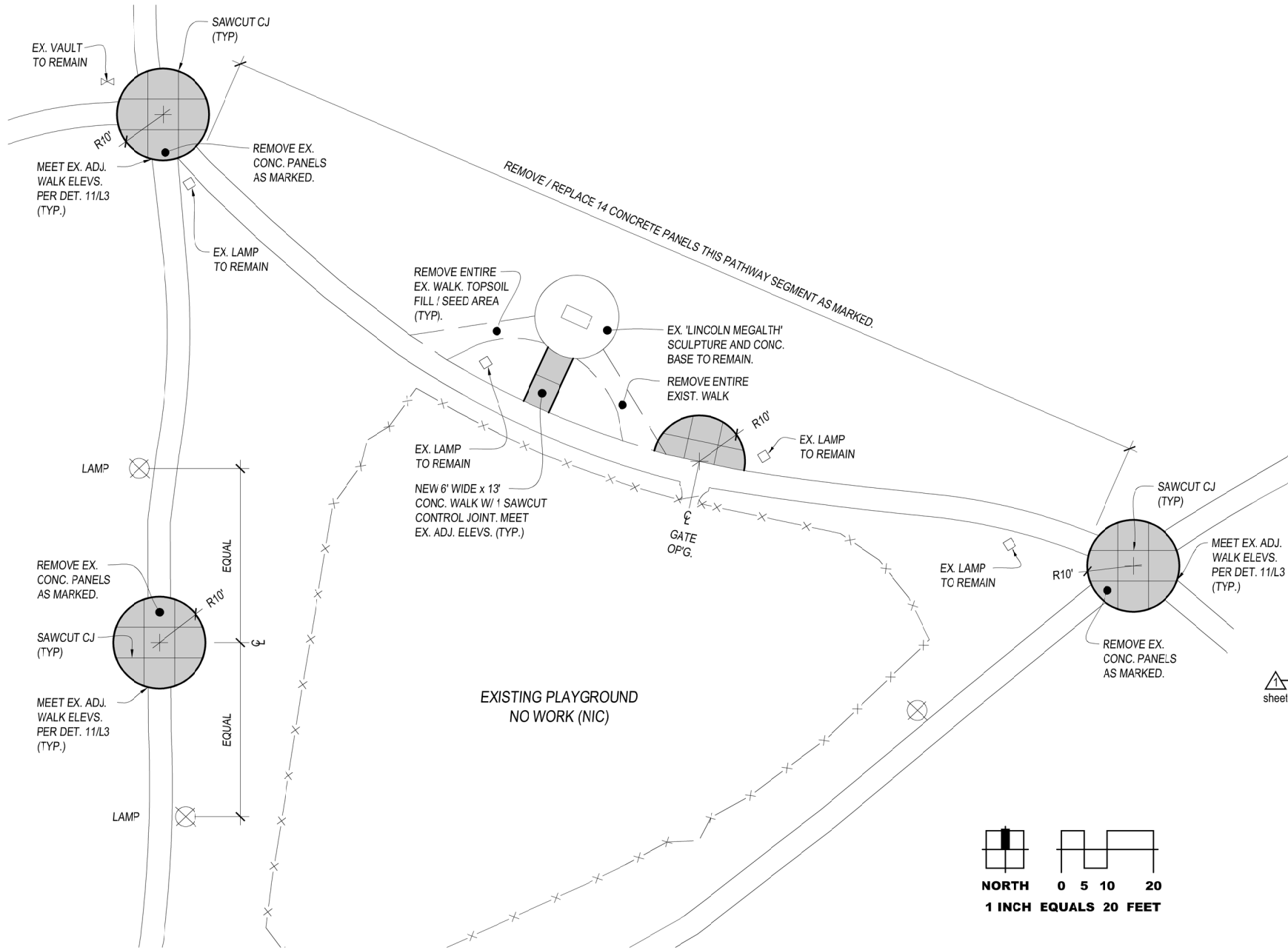
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| 2/26/2024 | for bid |
| 3/12/2024 | addendum 1 |

site plan

L1

sheet 1 of 3

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Bresnan Meeting Center
706 Kenwood Road
Champaign IL 61821

217.398.2550
champaignparks.com

west side park mobility upgrades
cpd west side park
400 w university avenue
champaign illinois 61820

| date | drawing issue |
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| 3/12/2024 | addendum 1 |
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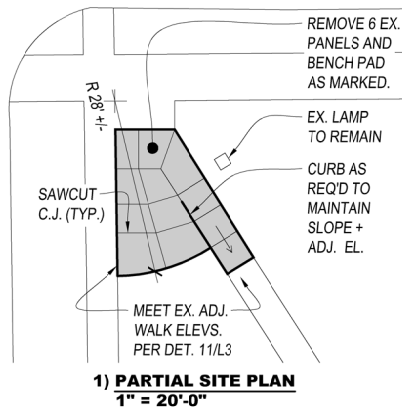
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partial plan

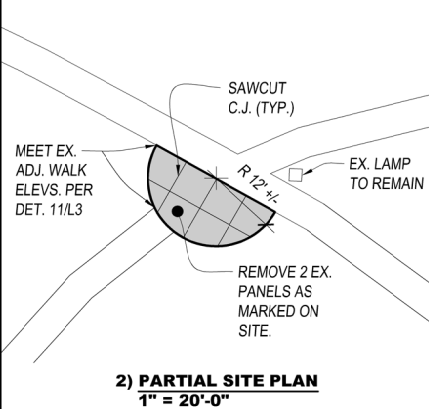
L2

sheet 2 of 3

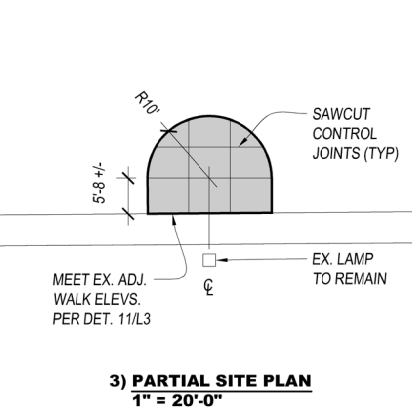
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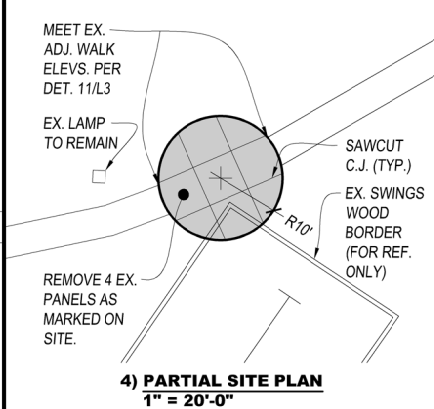
1) PARTIAL SITE PLAN
1" = 20'-0"



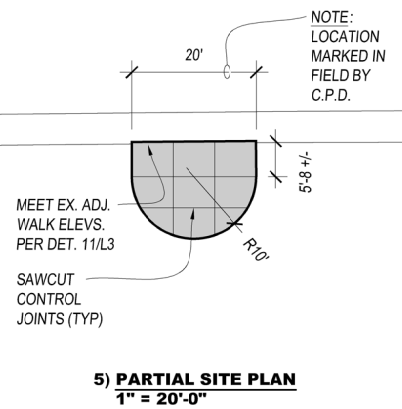
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1" = 20'-0"



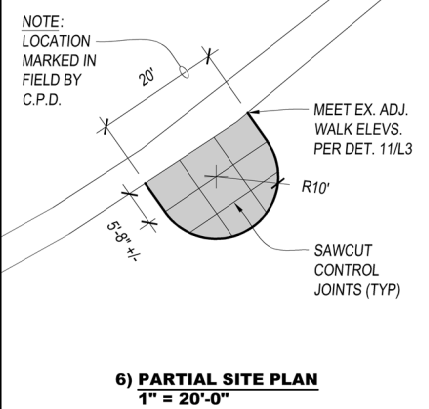
3) PARTIAL SITE PLAN
1" = 20'-0"



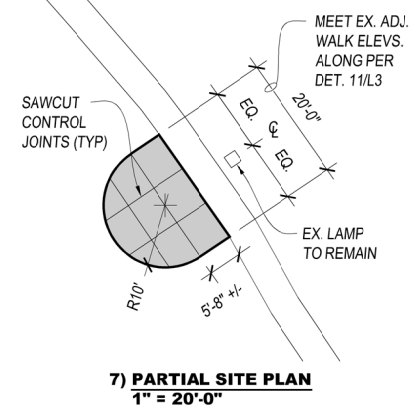
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1" = 20'-0"



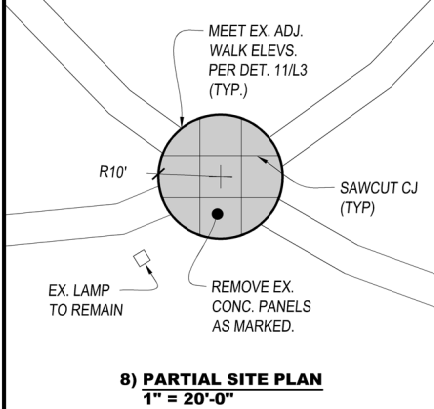
5) PARTIAL SITE PLAN
1" = 20'-0"



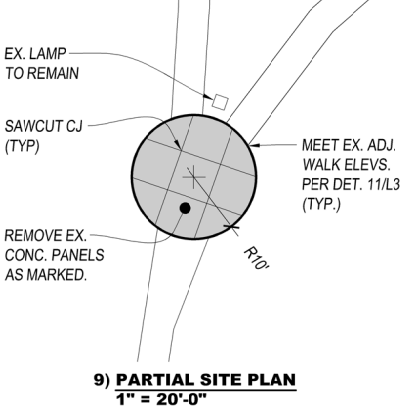
6) PARTIAL SITE PLAN
1" = 20'-0"



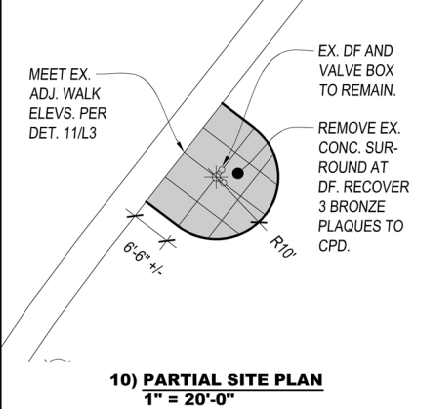
7) PARTIAL SITE PLAN
1" = 20'-0"



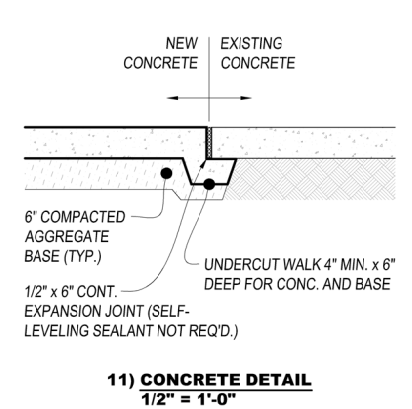
8) PARTIAL SITE PLAN
1" = 20'-0"



9) PARTIAL SITE PLAN
1" = 20'-0"



10) PARTIAL SITE PLAN
1" = 20'-0"



11) CONCRETE DETAIL
1/2" = 1'-0"

GENERAL NOTES:

- 1) ALL NEW P.C.C. IS 6" THICK.
- 2) ALL AGGREGATE BASE IS 6" THICK CA-6
- 3) NEW CONCRETE WORK SHOWN (SOLID GREY HATCH) IS APPROXIMATELY 4020 SF.
NOTE: REMOVAL / REPLACEMENT OF EX. WALKS IS ADD'L AND NOT INCLUDED IN THIS QTY.
- 4) EXISTING WALKS ARE 5' +/- WIDE.
- 5) CONTRACTOR RESPONSIBLE FOR SEEDING / MULCHING AREAS OF WORK AND CONSTRUCTION-DISTURBED AREAS. CONTRACTOR IS NOT RESPONSIBLE FOR MAINTENANCE OF SEEDED / MULCHED AREAS AFTER FINAL COMPLETION.
- 6) EXCESS TOPSOIL TO REMAIN ON SITE AT NW SECTION OF SITE (SEE SHEET L1).

CHAMPAIGN PARK DISTRICT
Bresnan Meeting Center
706 Kenwood Road
Champaign IL 61821
217.398.2550
champaignparks.com

west side park mobility upgrades
cpd west side park
400 w university avenue
champaign illinois 61820

| date | drawing issue |
|-----------|---------------|
| 3/12/2024 | addendum 1 |

partial plans; details
L3
sheet 3 of 3

CHAMPAIGN PARK DISTRICT Construction Agreement

This Agreement is made and entered into effective this ____ day of ____, 20__, by and between the Champaign Park District, a municipal corporation (hereinafter referred to as, "Park District"), whose principal address is 706 Kenwood Road, Champaign, Illinois, and **A & A Concrete, LLC**, hereinafter referred to as, "Contractor", whose principal address is **3107 N. Lincoln Ave. Urbana, IL 61802**

RECITALS:

WHEREAS, Park District and Contractor desire to enter into an agreement whereby Contractor will provide services to Park District at designated locations as hereafter set forth.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements herein set forth, Park District and Contractor agree as follows:

1. **Services.** The Contractor agrees to provide all materials, supplies, and equipment and to perform all labor required to complete the **West Side Park Mobility Upgrades project, from the West Side Park Mobility Upgrades bid**, within the Champaign Park District, Champaign Illinois as described in and in accordance with the provisions of the contract document which include, but are not limited to: information to vendors, drawings, specifications, request for bids, requests for quotes, contractor's bids and this construction contract, including any change orders agreed to hereinafter.
2. **Time of Performance.** The work to be performed under this contract shall not begin prior to **March 1, 2024 and must be completed by June 30, 2024**, unless prevented by adverse weather conditions and other circumstances approved in writing by the Park District. The work period may be extended at the sole discretion of the Park District as provided for herein. Failure to complete the work in such time shall be a breach of this contract entitling the Park District to recourse pursuant to Contractor's performance bond and the terms hereof.
3. **Compensation for Services.** Park District shall pay the Contractor for the services provided for the sum of **\$97,475.00**, payable on the 20th day of the month following total completion of all said work and approval and acceptance by owner which shall not be unreasonably withheld. All billing must be received by the Park District by the first Wednesday of the month in order to be paid in the same month. The Park District shall make installments as bills are received based on the work completed. Contractor shall submit invoice to the Park District (**ATTN: Daniel Olson**) by the first Friday of the month. Payment will be monthly after Board approval of the bills, which is the second Wednesday of each month. Invoice must include Park District issued purchase order number.
4. **Insurance.** Contractor shall keep in full force and effect at all times during this Agreement a comprehensive general liability insurance policy, with contractual liability coverage, with minimum limits of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate together with property damage insurance of not less than \$1,000,000. All insurance carriers providing the coverage set forth herein shall have a rating of A as assigned by A.M. Best and Co. and shall be reasonably satisfactory to Park District. All insurance coverage provided by Contractor shall be primary insurance as to Park District. Any insurance or self-insurance maintained by Park District shall be in excess of Contractor's insurance and shall not contribute with it. The Park District, its commissioners, officers, employees, agents, representatives, and volunteers shall be covered as additional insured's under the general liability coverage which shall contain no special limitation on the scope of protection afforded to the additional insured's, and shall contain appropriate extensions or riders necessary to assure coverage. The policy shall not be cancelled or amended without at least ten (10) days prior written notice having been given to the Park District. Cancellation of any such coverage without a substitute policy containing the required coverage's being put in force, shall be grounds for the Park District to immediately terminate this Agreement with no further rights afforded the Contractor. At its option, Park District may continue such insurance at its cost and obtain reimbursement and repayment thereof from Contractor.

In such event, Contractor shall pay the amount due within ten (10) days of payment by Park District. The Parties acknowledge that the Contractor may from time to time change insurers; provided that, the Park District shall be provided with a certificate of such insurance otherwise conforming to and in compliance with the terms hereof, promptly upon such change.

Provide a certificate of such insurance as may be applicable from time to time, listed below, at the time Agreement is signed and annually thereafter. Note that all limits of liability for insurance shall be not less than the following amounts, and must be greater where required by other laws or regulations and must be insured on an "occurrence" basis and not on a "claims made" basis:

Contractor shall maintain in effect at its sole expense the following insurance applicable to the work performed hereunder:

(a) Workers' Compensation:

- State Statutory
- Applicable Federal Statutory
- Must show policy number on certificate of insurance if workman's compensation is provided.

(b) Comprehensive General Liability:

- General Liability: 1,000,000 each occurrence (including completed operation and products liability)
- Property Damage: \$1,000,000 each occurrence
- General Aggregate: \$2,000,000 or a combined single limit of \$2,000,000
- Property damage liability insurance will provide Explosion, Collapse and underground coverages where applicable.

(c) Contractual Liability (Hold Harmless Coverage):

- Bodily Injury: \$1,000,000
- Property Damage: \$1,000,000 each occurrence
- Annual Aggregate: \$2,000,000 each occurrence

(d) Comprehensive Automobile Liability:

- Bodily Injury: \$1,000,000 per person and \$1,000,000 per accident
- Property Damage: \$500,000 each occurrence or combined single limit of \$500,000

(e) Umbrella Liability:

- \$5,000,000 each occurrence

The Park District, its officers, agents and employees are to be covered and named as additional insureds under the General Liability coverage and shall contain no special limitation on the scope of protection afforded to the additional insureds. The policy and/or coverage shall also contain a "contractual liability" clause. Prior to beginning work, Contractor shall furnish the Park District with 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 Park District prior to cancellation or material change of any insurance referred to therein. Failure of the Park District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Park District to identify a deficiency from the evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

All insurance carriers providing the coverage set forth herein shall have a rating of A as assigned by A.M. Best and Co. and satisfactory to the Park District at its sole discretion. All insurance coverage provided by Contractor shall be primary coverage as to the Park District. Any insurance or self-insurance maintained by the Park District shall be excess of Contractor's and shall not contribute to it.

5. **Indemnification.** Contractor shall indemnify, defend and hold harmless Park District and any of its commissioners, directors, officers, employees, agents, representatives, and volunteers from and against any and all liability, loss, costs, causes of actions, demands, attorney's fees, expenses, claims, suits and judgments of whatsoever kind and character, including without limitation, all possible costs of responding to demands, in whatever form that may take, with respect to any claim made against Park District that arises solely from an act, failure or omission on the part of Contractor or any of its trustees, directors, officers, employees, agents and representatives in carrying out of the terms of this Agreement.

6. **Independent Contractors.** Contractor acknowledges and agrees that Contractor is not an employee of the Park District, is not entitled to any benefits or protections afforded employees of the Park District, nor bound by any obligations of employees of the Park District. Nevertheless, Contractor will not act contrary to the policies of the Park District. Contractor understands and fully agrees that Contractor will not be insured under provisions of the unemployment compensation insurance of the Park District or the workers' compensation insurance of the Park District, and that any injury or property damage in connection with the work performed will be Contractor's sole responsibility and not that of the Park District. It is also understood that Contractor is not protected as an employee or as a person acting as an agent or employee under the provisions of the general liability insurance of the Park District and, therefore, Contractor will be solely responsible for Contractor's own acts or omissions, and those of Contractor's employees and agents, if any. The Park District will not in any manner whatsoever be obligated to defend, indemnify or hold harmless Contractor, or Contractor's employees and agents, if any, in matters of liability.

Contractor acknowledges and agrees that Contractor is solely responsible to pay all applicable federal, state and local income and withholding tax obligations or contributions imposed pursuant to Social Security, unemployment insurance and worker's compensation insurance on behalf of Contractor and those employees and agents, if any, employed by Contractor.

7. **Default.** The Park District may terminate this Agreement in the event of a default or breach. A default or breach shall be deemed to occur when any of the services are not provided as required and in the manner and at the times provided for in the specifications referred to in this Agreement. In the event of breach or termination, the Contractor shall be responsible to pay Park District for the reasonable costs incurred by Park District in obtaining replacement services.

8. **Laws and Venue.** The parties agree that the laws governing this Agreement shall be the laws of the State of Illinois. The parties further agree that in the event of any claim or lawsuit regarding this Agreement, Champaign County, Illinois shall be the appropriate venue for such claim or suit.

9. **Severability.** In any event one or more of the provisions contained in this Agreement shall be determined by a Court to be invalid, illegal or unenforceable in any respect, such provision shall be deemed severed from this Agreement, and the validity, legality, or enforceability of the remaining provisions of this Agreement or any other application thereof shall not be affected or impaired thereby, and shall, therefore remain in effect.

10. **Compliance with Laws.** Contractor shall comply with all laws, statutes, ordinances and regulations applicable to the work to be performed, including, without limitation, the Illinois Prevailing Wage Act, Illinois Fair Employment Practices Act, all equal employment opportunity laws, all affirmative action

ordinances and all other state, federal, or local laws or regulations applicable to the performance of this contract. In this connection, Contractor guarantees that not less than the prevailing rate of wages shall be paid to laborers, workers and mechanics performing work required to complete this contract. Further, Contractor acknowledges that, except in certain situations permitted by law, Illinois-resident laborers will be used for the work.

11. **Assignment.** Neither party, nor any subsidiary, successor, partner, employee, agent or affiliate shall assign or delegate any of their rights or responsibilities under this Agreement without the prior written consent of the other, which shall not be unreasonably withheld. Any assignee or sub-contractor must be acceptable to the Park District, must furnish a signed Champaign Park District "Commitment to engage in Affirmative Action Practices" form, and must agree to comply with all statutory requirements pertaining to Illinois prevailing wages, the Illinois Fair Employment Act, Equal Opportunity laws and all other State and Federal laws and regulations applicable to the performance of this Agreement.
12. **Time of the Essence.** Time is of the essence in the performance and completion of the terms of this Agreement.
13. **Waiver.** Failure to insist upon strict compliance with any of the terms, covenants or conditions of this Agreement, shall not be deemed a waiver of the term, covenant or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of the right or power at all or any other times.
14. **Counterparts.** This Agreement shall be executed in duplicate, each of which shall be deemed to be an original.
15. **Notice.** All notices required pursuant to this Agreement shall be in writing, and shall be deemed to have been given on the date and at the time they are sent by certified mail, return receipt requested, to the respective party at the address set forth below, or at such other place or address as the parties shall provide to each other in writing. In addition, any such notice shall be sent by first class regular U.S. Mail.

Champaign Park District
Attention: Sarah Sandquist
Executive Director
706 Kenwood Road
Champaign, IL 61821

A & A Concrete
Attention: Crystal Anderson
President
3107 N. Lincoln Ave.
Urbana, IL 61802

16. **Entire Agreement and Amendment.** This Agreement and any terms or specifications attached hereto or otherwise referred to herein constitute the entire agreement between the parties pertaining to the subject matter hereof and supersede all prior or contemporaneous agreements and understandings either oral or written of the parties in connection herewith. No modification of this Agreement shall be effective unless made in writing, signed by both parties and dated after the date hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement to be executed effective as of the day and year first above written.

PARK DISTRICT:

Champaign Park District

By: _____
Executive Director

Date: _____

ATTEST:

By: _____
Board Secretary

Date: _____

CONTRACTOR:

A & A Concrete

By: _____

It's: _____

Date: _____

ATTEST:

By: _____

Its: _____

Date: _____



REPORT TO PARK BOARD

FROM: Sarah Sandquist, Executive Director

DATE: March 27, 2024

SUBJECT: Approval of Bid for Spalding Skate Park Safety Netting

Background

The Unit 4 School District and Park District renovations at Spalding Park, specifically the baseball field, have created a safety issue for the skate park. Foul balls that go over existing field netting and fencing are ending up inside and near the skate park. Both facilities are in use at the same time. Additional safety netting is needed to alleviate safety concerns.

This bid includes the materials, equipment and installation for a one hundred fifty (150) foot long, four pole, safety net system along the first base line, between the baseball field and the skate park.

An invitation to bid was published in *The News-Gazette* and bids were opened and read aloud on Tuesday, March 19, 2024. One bid was received. The results are as follows:

| BIDDER | BASE BID |
|---------------------------|--------------|
| Midwest Netting Solutions | \$ 76,505.33 |

Prior Board Action

The Park Board has approved this expenditure in the Capital Budget for the upcoming fiscal year (2024-2025).

Budget Impact

\$92,000.00 has been budgeted in the 2024/2025 Capital Budget - Spalding Skate Park Safety Netting.

Recommended Action

Staff recommends accepting the low, responsible bid and authorizing the Executive Director to enter into a contract with Midwest Netting Solutions for the purchase and installation of the safety netting for a total of \$76,505.33.

Prepared by:

Daniel J. Olson
Director of Operations and Planning

Reviewed by:

Sarah Sandquist
Executive Director

CHAMPAIGN PARK DISTRICT Construction Agreement

This Agreement is made and entered into effective this ____ day of ____, 20__, by and between the Champaign Park District, a municipal corporation (hereinafter referred to as, "Park District"), whose principal address is 706 Kenwood Road, Champaign, Illinois, and **Midwest Netting Solutions, LLC** hereinafter referred to as, "Contractor", whose principal address is **2009 Johns Dr. Glenview, IL 60025**.

RECITALS:

WHEREAS, Park District and Contractor desire to enter into an agreement whereby Contractor will provide services to Park District at designated locations as hereafter set forth.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements herein set forth, Park District and Contractor agree as follows:

1. **Services.** The Contractor agrees to provide all materials, supplies, and equipment and to perform all labor required to complete the **Spalding Skate Park Safety Netting project, from the Spalding Skate Park Safety Netting bid**, within the Champaign Park District, Champaign Illinois as described in and in accordance with the provisions of the contract document which include, but are not limited to: information to vendors, drawings, specifications, request for bids, requests for quotes, contractor's bids and this construction contract, including any change orders agreed to hereinafter.
2. **Time of Performance.** The work to be performed under this contract shall not begin prior to **April 1, 2024 and must be completed by August 1, 2024**, unless prevented by adverse weather conditions and other circumstances approved in writing by the Park District. The work period may be extended at the sole discretion of the Park District as provided for herein. Failure to complete the work in such time shall be a breach of this contract entitling the Park District to recourse pursuant to Contractor's performance bond and the terms hereof.
3. **Compensation for Services.** Park District shall pay the Contractor for the services provided for the sum of **\$76,505.33**, payable on the 20th day of the month following total completion of all said work and approval and acceptance by owner which shall not be unreasonably withheld. All billing must be received by the Park District by the first Wednesday of the month in order to be paid in the same month. The Park District shall make installments as bills are received based on the work completed. Contractor shall submit invoice to the Park District (**ATTN: Daniel Olson**) by the first Friday of the month. Payment will be monthly after Board approval of the bills, which is the second Wednesday of each month. Invoice must include Park District issued purchase order number.
4. **Insurance.** Contractor shall keep in full force and effect at all times during this Agreement a comprehensive general liability insurance policy, with contractual liability coverage, with minimum limits of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate together with property damage insurance of not less than \$1,000,000. All insurance carriers providing the coverage set forth herein shall have a rating of A as assigned by A.M. Best and Co. and shall be reasonably satisfactory to Park District. All insurance coverage provided by Contractor shall be primary insurance as to Park District. Any insurance or self-insurance maintained by Park District shall be in excess of Contractor's insurance and shall not contribute with it. The Park District, its commissioners, officers, employees, agents, representatives, and volunteers shall be covered as additional insured's under the general liability coverage which shall contain no special limitation on the scope of protection afforded to the additional insured's, and shall contain appropriate extensions or riders necessary to assure coverage. The policy shall not be cancelled or amended without at least ten (10) days prior written notice having been given to the Park District. Cancellation of any such coverage without a substitute policy containing the required coverage's being put in force, shall be grounds for the Park District to immediately terminate this Agreement with no further rights afforded the Contractor. At its option, Park District may continue such insurance at its cost and obtain reimbursement and repayment thereof from Contractor.

In such event, Contractor shall pay the amount due within ten (10) days of payment by Park District. The Parties acknowledge that the Contractor may from time to time change insurers; provided that, the Park District shall be provided with a certificate of such insurance otherwise conforming to and in compliance with the terms hereof, promptly upon such change.

Provide a certificate of such insurance as may be applicable from time to time, listed below, at the time Agreement is signed and annually thereafter. Note that all limits of liability for insurance shall be not less than the following amounts, and must be greater where required by other laws or regulations and must be insured on an "occurrence" basis and not on a "claims made" basis:

Contractor shall maintain in effect at its sole expense the following insurance applicable to the work performed hereunder:

(a) Workers' Compensation:

- State Statutory
- Applicable Federal Statutory
- Must show policy number on certificate of insurance if workman's compensation is provided.

(b) Comprehensive General Liability:

- General Liability: 1,000,000 each occurrence (including completed operation and products liability)
- Property Damage: \$1,000,000 each occurrence
- General Aggregate: \$2,000,000 or a combined single limit of \$2,000,000
- Property damage liability insurance will provide Explosion, Collapse and underground coverages where applicable.

(c) Contractual Liability (Hold Harmless Coverage):

- Bodily Injury: \$1,000,000
- Property Damage: \$1,000,000 each occurrence
- Annual Aggregate: \$2,000,000 each occurrence

(d) Comprehensive Automobile Liability:

- Bodily Injury: \$1,000,000 per person and \$1,000,000 per accident
- Property Damage: \$500,000 each occurrence or combined single limit of \$500,000

(e) Umbrella Liability:

- \$5,000,000 each occurrence

The Park District, its officers, agents and employees are to be covered and named as additional insureds under the General Liability coverage and shall contain no special limitation on the scope of protection afforded to the additional insureds. The policy and/or coverage shall also contain a "contractual liability" clause. Prior to beginning work, Contractor shall furnish the Park District with 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 Park District prior to cancellation or material change of any insurance referred to therein. Failure of the Park District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Park District to identify a deficiency from the evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

All insurance carriers providing the coverage set forth herein shall have a rating of A as assigned by A.M. Best and Co. and satisfactory to the Park District at its sole discretion. All insurance coverage provided by Contractor shall be primary coverage as to the Park District. Any insurance or self-insurance maintained by the Park District shall be excess of Contractor's and shall not contribute to it.

5. **Indemnification.** Contractor shall indemnify, defend and hold harmless Park District and any of its commissioners, directors, officers, employees, agents, representatives, and volunteers from and against any and all liability, loss, costs, causes of actions, demands, attorney's fees, expenses, claims, suits and judgments of whatsoever kind and character, including without limitation, all possible costs of responding to demands, in whatever form that may take, with respect to any claim made against Park District that arises solely from an act, failure or omission on the part of Contractor or any of its trustees, directors, officers, employees, agents and representatives in carrying out of the terms of this Agreement.
6. **Independent Contractors.** Contractor acknowledges and agrees that Contractor is not an employee of the Park District, is not entitled to any benefits or protections afforded employees of the Park District, nor bound by any obligations of employees of the Park District. Nevertheless, Contractor will not act contrary to the policies of the Park District. Contractor understands and fully agrees that Contractor will not be insured under provisions of the unemployment compensation insurance of the Park District or the workers' compensation insurance of the Park District, and that any injury or property damage in connection with the work performed will be Contractor's sole responsibility and not that of the Park District. It is also understood that Contractor is not protected as an employee or as a person acting as an agent or employee under the provisions of the general liability insurance of the Park District and, therefore, Contractor will be solely responsible for Contractor's own acts or omissions, and those of Contractor's employees and agents, if any. The Park District will not in any manner whatsoever be obligated to defend, indemnify or hold harmless Contractor, or Contractor's employees and agents, if any, in matters of liability.

Contractor acknowledges and agrees that Contractor is solely responsible to pay all applicable federal, state and local income and withholding tax obligations or contributions imposed pursuant to Social Security, unemployment insurance and worker's compensation insurance on behalf of Contractor and those employees and agents, if any, employed by Contractor.

7. **Default.** The Park District may terminate this Agreement in the event of a default or breach. A default or breach shall be deemed to occur when any of the services are not provided as required and in the manner and at the times provided for in the specifications referred to in this Agreement. In the event of breach or termination, the Contractor shall be responsible to pay Park District for the reasonable costs incurred by Park District in obtaining replacement services.
8. **Laws and Venue.** The parties agree that the laws governing this Agreement shall be the laws of the State of Illinois. The parties further agree that in the event of any claim or lawsuit regarding this Agreement, Champaign County, Illinois shall be the appropriate venue for such claim or suit.
9. **Severability.** In any event one or more of the provisions contained in this Agreement shall be determined by a Court to be invalid, illegal or unenforceable in any respect, such provision shall be deemed severed from this Agreement, and the validity, legality, or enforceability of the remaining provisions of this Agreement or any other application thereof shall not be affected or impaired thereby, and shall, therefore remain in effect.
10. **Compliance with Laws.** Contractor shall comply with all laws, statutes, ordinances and regulations applicable to the work to be performed, including, without limitation, the Illinois Prevailing Wage Act, Illinois Fair Employment Practices Act, all equal employment opportunity laws, all affirmative action

ordinances and all other state, federal, or local laws or regulations applicable to the performance of this contract. In this connection, Contractor guarantees that not less than the prevailing rate of wages shall be paid to laborers, workers and mechanics performing work required to complete this contract. Further, Contractor acknowledges that, except in certain situations permitted by law, Illinois-resident laborers will be used for the work.

11. **Assignment.** Neither party, nor any subsidiary, successor, partner, employee, agent or affiliate shall assign or delegate any of their rights or responsibilities under this Agreement without the prior written consent of the other, which shall not be unreasonably withheld. Any assignee or sub-contractor must be acceptable to the Park District, must furnish a signed Champaign Park District "Commitment to engage in Affirmative Action Practices" form, and must agree to comply with all statutory requirements pertaining to Illinois prevailing wages, the Illinois Fair Employment Act, Equal Opportunity laws and all other State and Federal laws and regulations applicable to the performance of this Agreement.
12. **Time of the Essence.** Time is of the essence in the performance and completion of the terms of this Agreement.
13. **Waiver.** Failure to insist upon strict compliance with any of the terms, covenants or conditions of this Agreement, shall not be deemed a waiver of the term, covenant or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of the right or power at all or any other times.
14. **Counterparts.** This Agreement shall be executed in duplicate, each of which shall be deemed to be an original.
15. **Notice.** All notices required pursuant to this Agreement shall be in writing, and shall be deemed to have been given on the date and at the time they are sent by certified mail, return receipt requested, to the respective party at the address set forth below, or at such other place or address as the parties shall provide to each other in writing. In addition, any such notice shall be sent by first class regular U.S. Mail.

Champaign Park District
Attention: Sarah Sandquist
Executive Director
706 Kenwood Road
Champaign, IL 61821

Midwest Netting Solutions, LLC
Attention: Mark Lato
Authorized Agent
2009 Johns Dr.
Glenview, IL 60025

16. **Entire Agreement and Amendment.** This Agreement and any terms or specifications attached hereto or otherwise referred to herein constitute the entire agreement between the parties pertaining to the subject matter hereof and supersede all prior or contemporaneous agreements and understandings either oral or written of the parties in connection herewith. No modification of this Agreement shall be effective unless made in writing, signed by both parties and dated after the date hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement to be executed effective as of the day and year first above written.

PARK DISTRICT:

Champaign Park District

By: _____
Executive Director

Date: _____

ATTEST:

By: _____
Board Secretary

Date: _____

CONTRACTOR:

Midwest Netting Solutions, LLC

By: _____

It's: _____

Date: _____

ATTEST:

By: _____

Its: _____

Date: _____



REPORT TO PARK BOARD

FROM: Sarah Sandquist, Executive Director

DATE: March 27, 2024

SUBJECT: Approval of Bid for Henry Michael Park Shelter Construction

Background

A shelter at Henry Michael Park has been the highest request for that park for a number of years.

This bid is specifically for the installation of sidewalks, the assembly and installation of the shelter, and the installation of a tile line to help with flooding. This bid does not include the shelter and guttering as it was purchased earlier using the competitive bidding procurement site, Sourcewell. The shelter is a Poligon brand, sixteen by sixteen-foot square shelter.

An invitation to bid was published in *The News-Gazette* and bids were opened and read aloud on Tuesday, March 19, 2024. The results are as follows:

| BIDDER | BASE BID |
|--|--------------|
| Concrete, Inc. | \$ 31,795.61 |
| A & A Concrete, LLC | \$ 40,900.00 |
| Mid Illinois Concrete and Excavation, Inc. | \$ 66,530.00 |
| Commercial Builders, Inc. | \$ 77,900.00 |

Prior Board Action

The Park Board has approved this expenditure in the Capital Budget for FY2023-2024.

Budget Impact

A total of \$ 44,000 was budgeted for the project, not including ADA funds for sidewalks and playground entrance. The combined final cost for the project will be \$ 53,936.61. The breakdown is as follows:

| | |
|----------------------|--|
| \$ 44,000.00 | Budgeted in the 2023/24 Capital Budget for Henry Michael Park Shelter. |
| <u>-\$ 22,141.50</u> | Purchase and delivery of shelter. |
| \$ 21,858.50 | Remaining for construction and installation. |
| | |
| \$ 21,858.50 | Remaining for construction and installation. |
| <u>+\$ 9,937.11</u> | From ADA budget for upgrades/sidewalk/playground entrance ramp. |
| \$ 31,795.61 | For construction and installation. |

The mission of the Champaign Park District is to enhance our community's quality of life through positive experiences in parks, recreation, and cultural arts.

Recommended Action

Staff recommends the Board approve using capital project funding and ADA funding to complete the project, and to accept the low, responsible bid and authorizing the Executive Director to enter into a contract with Concrete, Inc. for the Henry Michael Park Shelter project for a total of \$ 31,795.61.

Prepared by:

Daniel J. Olson
Director of Operations and Planning

Reviewed by:

Sarah Sandquist
Executive Director

CHAMPAIGN PARK DISTRICT Construction Agreement

This Agreement is made and entered into effective this ____ day of ____, 20__, by and between the Champaign Park District, a municipal corporation (hereinafter referred to as, "Park District"), whose principal address is 706 Kenwood Road, Champaign, Illinois, and **Concrete, Inc.**, hereinafter referred to as, "Contractor", whose principal address is **725 N. Church St., Thomasboro, IL 61878**.

RECITALS:

WHEREAS, Park District and Contractor desire to enter into an agreement whereby Contractor will provide services to Park District at designated locations as hereafter set forth.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements herein set forth, Park District and Contractor agree as follows:

- 1. Services.** The Contractor agrees to provide all materials, supplies, and equipment and to perform all labor required to complete the **Henry Michael Park Shelter project, from the Henry Michael Park Shelter bid**, within the Champaign Park District, Champaign Illinois as described in and in accordance with the provisions of the contract document which include, but are not limited to: information to vendors, drawings, specifications, request for bids, requests for quotes, contractor's bids and this construction contract, including any change orders agreed to hereinafter.
- 2. Time of Performance.** The work to be performed under this contract shall not begin prior to **March, 1, 2024 and must be completed by August 1, 2024**, unless prevented by adverse weather conditions and other circumstances approved in writing by the Park District. The work period may be extended at the sole discretion of the Park District as provided for herein. Failure to complete the work in such time shall be a breach of this contract entitling the Park District to recourse pursuant to Contractor's performance bond and the terms hereof.
- 3. Compensation for Services.** Park District shall pay the Contractor for the services provided for the sum of **\$31,795.61**, payable on the 20th day of the month following total completion of all said work and approval and acceptance by owner which shall not be unreasonably withheld. All billing must be received by the Park District by the first Wednesday of the month in order to be paid in the same month. The Park District shall make installments as bills are received based on the work completed. Contractor shall submit invoice to the Park District (**ATTN: Daniel Olson**) by the first Friday of the month. Payment will be monthly after Board approval of the bills, which is the second Wednesday of each month. Invoice must include Park District issued purchase order number.
- 4. Insurance.** Contractor shall keep in full force and effect at all times during this Agreement a comprehensive general liability insurance policy, with contractual liability coverage, with minimum limits of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate together with property damage insurance of not less than \$1,000,000. All insurance carriers providing the coverage set forth herein shall have a rating of A as assigned by A.M. Best and Co. and shall be reasonably satisfactory to Park District. All insurance coverage provided by Contractor shall be primary insurance as to Park District. Any insurance or self-insurance maintained by Park District shall be in excess of Contractor's insurance and shall not contribute with it. The Park District, its commissioners, officers, employees, agents, representatives, and volunteers shall be covered as additional insured's under the general liability coverage which shall contain no special limitation on the scope of protection afforded to the additional insured's, and shall contain appropriate extensions or riders necessary to assure coverage. The policy shall not be cancelled or amended without at least ten (10) days prior written notice having been given to the Park District. Cancellation of any such coverage without a substitute policy containing the required coverage's being put in force, shall be grounds for the Park District to immediately terminate this Agreement with no further rights afforded the Contractor. At its option, Park District may continue such insurance at its cost and obtain reimbursement and repayment thereof from Contractor.

In such event, Contractor shall pay the amount due within ten (10) days of payment by Park District. The Parties acknowledge that the Contractor may from time to time change insurers; provided that, the Park District shall be provided with a certificate of such insurance otherwise conforming to and in compliance with the terms hereof, promptly upon such change.

Provide a certificate of such insurance as may be applicable from time to time, listed below, at the time Agreement is signed and annually thereafter. Note that all limits of liability for insurance shall be not less than the following amounts, and must be greater where required by other laws or regulations and must be insured on an "occurrence" basis and not on a "claims made" basis:

Contractor shall maintain in effect at its sole expense the following insurance applicable to the work performed hereunder:

(a) Workers' Compensation:

- State Statutory
- Applicable Federal Statutory
- Must show policy number on certificate of insurance if workman's compensation is provided.

(b) Comprehensive General Liability:

- General Liability: 1,000,000 each occurrence (including completed operation and products liability)
- Property Damage: \$1,000,000 each occurrence
- General Aggregate: \$2,000,000 or a combined single limit of \$2,000,000
- Property damage liability insurance will provide Explosion, Collapse and underground coverages where applicable.

(c) Contractual Liability (Hold Harmless Coverage):

- Bodily Injury: \$1,000,000
- Property Damage: \$1,000,000 each occurrence
- Annual Aggregate: \$2,000,000 each occurrence

(d) Comprehensive Automobile Liability:

- Bodily Injury: \$1,000,000 per person and \$1,000,000 per accident
- Property Damage: \$500,000 each occurrence or combined single limit of \$500,000

(e) Umbrella Liability:

- \$5,000,000 each occurrence

The Park District, its officers, agents and employees are to be covered and named as additional insureds under the General Liability coverage and shall contain no special limitation on the scope of protection afforded to the additional insureds. The policy and/or coverage shall also contain a "contractual liability" clause. Prior to beginning work, Contractor shall furnish the Park District with 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 Park District prior to cancellation or material change of any insurance referred to therein. Failure of the Park District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Park District to identify a deficiency from the evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

All insurance carriers providing the coverage set forth herein shall have a rating of A as assigned by A.M. Best and Co. and satisfactory to the Park District at its sole discretion. All insurance coverage provided by Contractor shall be primary coverage as to the Park District. Any insurance or self-insurance maintained by the Park District shall be excess of Contractor's and shall not contribute to it.

5. **Indemnification.** Contractor shall indemnify, defend and hold harmless Park District and any of its commissioners, directors, officers, employees, agents, representatives, and volunteers from and against any and all liability, loss, costs, causes of actions, demands, attorney's fees, expenses, claims, suits and judgments of whatsoever kind and character, including without limitation, all possible costs of responding to demands, in whatever form that may take, with respect to any claim made against Park District that arises solely from an act, failure or omission on the part of Contractor or any of its trustees, directors, officers, employees, agents and representatives in carrying out of the terms of this Agreement.

6. **Independent Contractors.** Contractor acknowledges and agrees that Contractor is not an employee of the Park District, is not entitled to any benefits or protections afforded employees of the Park District, nor bound by any obligations of employees of the Park District. Nevertheless, Contractor will not act contrary to the policies of the Park District. Contractor understands and fully agrees that Contractor will not be insured under provisions of the unemployment compensation insurance of the Park District or the workers' compensation insurance of the Park District, and that any injury or property damage in connection with the work performed will be Contractor's sole responsibility and not that of the Park District. It is also understood that Contractor is not protected as an employee or as a person acting as an agent or employee under the provisions of the general liability insurance of the Park District and, therefore, Contractor will be solely responsible for Contractor's own acts or omissions, and those of Contractor's employees and agents, if any. The Park District will not in any manner whatsoever be obligated to defend, indemnify or hold harmless Contractor, or Contractor's employees and agents, if any, in matters of liability.

Contractor acknowledges and agrees that Contractor is solely responsible to pay all applicable federal, state and local income and withholding tax obligations or contributions imposed pursuant to Social Security, unemployment insurance and worker's compensation insurance on behalf of Contractor and those employees and agents, if any, employed by Contractor.

7. **Default.** The Park District may terminate this Agreement in the event of a default or breach. A default or breach shall be deemed to occur when any of the services are not provided as required and in the manner and at the times provided for in the specifications referred to in this Agreement. In the event of breach or termination, the Contractor shall be responsible to pay Park District for the reasonable costs incurred by Park District in obtaining replacement services.

8. **Laws and Venue.** The parties agree that the laws governing this Agreement shall be the laws of the State of Illinois. The parties further agree that in the event of any claim or lawsuit regarding this Agreement, Champaign County, Illinois shall be the appropriate venue for such claim or suit.

9. **Severability.** In any event one or more of the provisions contained in this Agreement shall be determined by a Court to be invalid, illegal or unenforceable in any respect, such provision shall be deemed severed from this Agreement, and the validity, legality, or enforceability of the remaining provisions of this Agreement or any other application thereof shall not be affected or impaired thereby, and shall, therefore remain in effect.

10. **Compliance with Laws.** Contractor shall comply with all laws, statutes, ordinances and regulations applicable to the work to be performed, including, without limitation, the Illinois Prevailing Wage Act, Illinois Fair Employment Practices Act, all equal employment opportunity laws, all affirmative action

ordinances and all other state, federal, or local laws or regulations applicable to the performance of this contract. In this connection, Contractor guarantees that not less than the prevailing rate of wages shall be paid to laborers, workers and mechanics performing work required to complete this contract. Further, Contractor acknowledges that, except in certain situations permitted by law, Illinois-resident laborers will be used for the work.

11. **Assignment.** Neither party, nor any subsidiary, successor, partner, employee, agent or affiliate shall assign or delegate any of their rights or responsibilities under this Agreement without the prior written consent of the other, which shall not be unreasonably withheld. Any assignee or sub-contractor must be acceptable to the Park District, must furnish a signed Champaign Park District "Commitment to engage in Affirmative Action Practices" form, and must agree to comply with all statutory requirements pertaining to Illinois prevailing wages, the Illinois Fair Employment Act, Equal Opportunity laws and all other State and Federal laws and regulations applicable to the performance of this Agreement.
12. **Time of the Essence.** Time is of the essence in the performance and completion of the terms of this Agreement.
13. **Waiver.** Failure to insist upon strict compliance with any of the terms, covenants or conditions of this Agreement, shall not be deemed a waiver of the term, covenant or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of the right or power at all or any other times.
14. **Counterparts.** This Agreement shall be executed in duplicate, each of which shall be deemed to be an original.
15. **Notice.** All notices required pursuant to this Agreement shall be in writing, and shall be deemed to have been given on the date and at the time they are sent by certified mail, return receipt requested, to the respective party at the address set forth below, or at such other place or address as the parties shall provide to each other in writing. In addition, any such notice shall be sent by first class regular U.S. Mail.

Champaign Park District
Attention: Sarah Sandquist
Executive Director
706 Kenwood Road
Champaign, IL 61821

Concrete Inc.
Attention: William Tyler Evans
Authorized Agent
725 N. Church St.
Thomasboro, IL 61878

16. **Entire Agreement and Amendment.** This Agreement and any terms or specifications attached hereto or otherwise referred to herein constitute the entire agreement between the parties pertaining to the subject matter hereof and supersede all prior or contemporaneous agreements and understandings either oral or written of the parties in connection herewith. No modification of this Agreement shall be effective unless made in writing, signed by both parties and dated after the date hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement to be executed effective as of the day and year first above written.

PARK DISTRICT:

Champaign Park District

By: _____
Executive Director

Date: _____

ATTEST:

By: _____
Board Secretary

Date: _____

CONTRACTOR:

Concrete, Inc.

By: _____

It's: _____

Date: _____

ATTEST:

By: _____

Its: _____

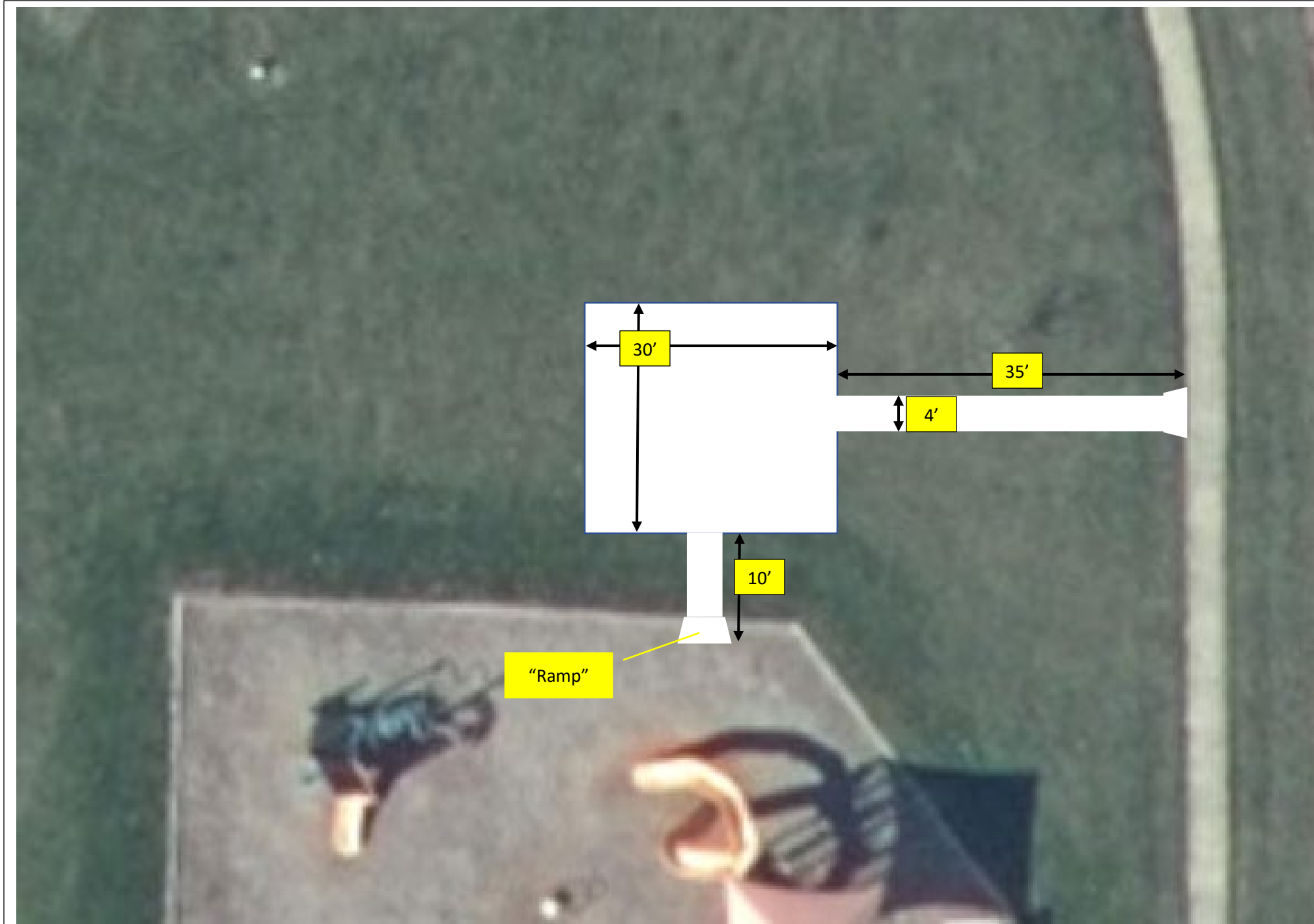
Date: _____



DRAIN TILE LINE

1. Existing tile line shown in light green.
2. New tile line shown in orange and shown in approximate location.
3. Tile line shall be four (4) inch diameter.
4. Approximate run of new tile line is 180 feet. Actual measurements shall be completed by bidder prior to bidding.
5. New tile line connection to existing tile line shall be sealed to prevent leaking.

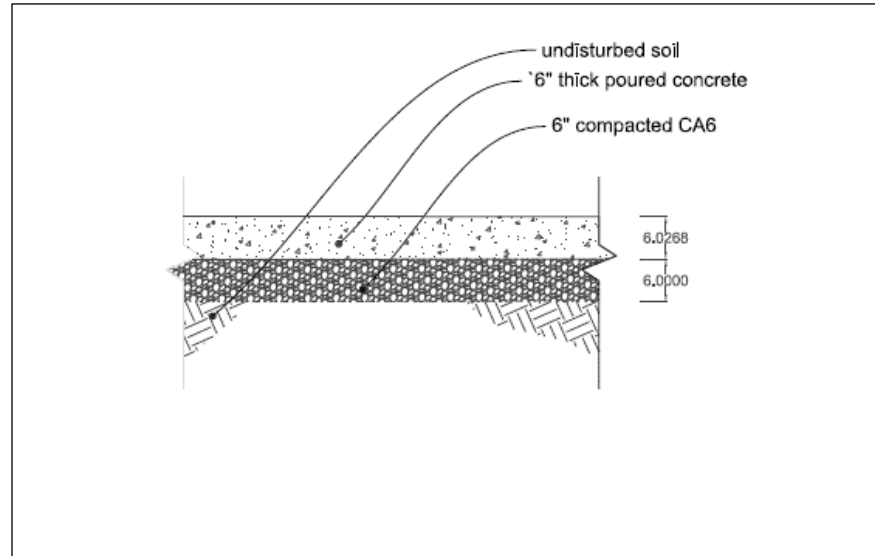
| | | | |
|--------------------|--------------|-----------------------------------|--|
| HENRY MICHAEL PARK | | CHAMPAIGN PARK DISTRICT | |
| CREATE DATE: | DANIEL OLSON | PRINT DATE: | |
| CHAMPAIGN, IL | | NOT DRAWN TO SCALE – CONCEPT ONLY | |
| SHEET | | CPD 1 | |



CONCRETE SIZE

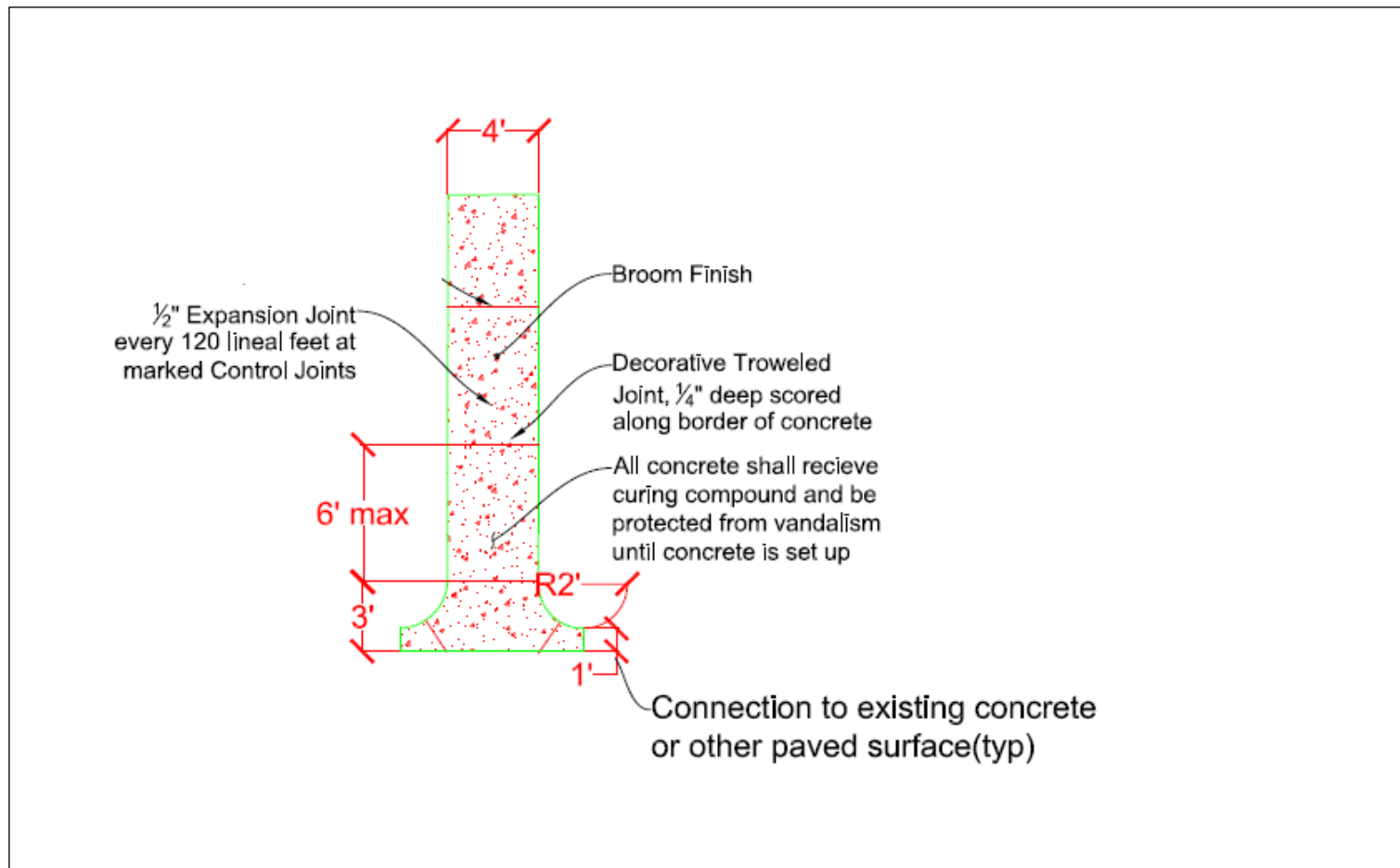
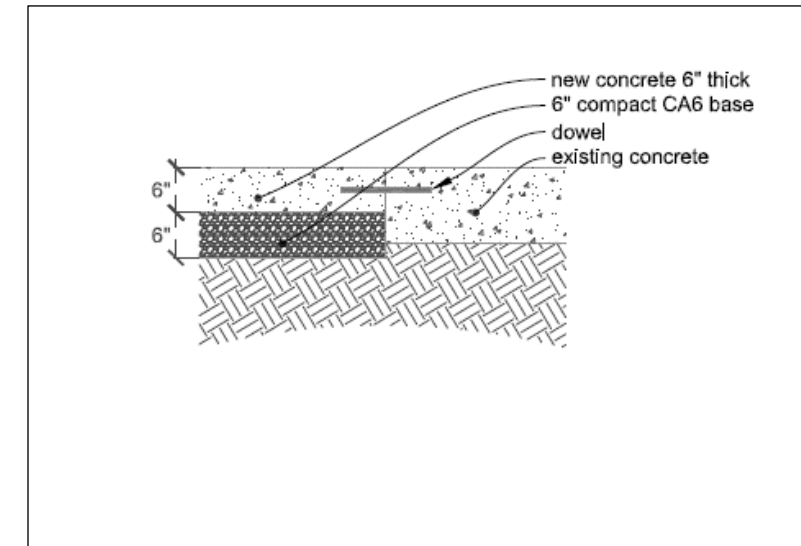
1. New concrete indicated in white.
2. Shelter shall be centered on the 30' by 30' slab.
3. Sidewalk lengths are approximate.
4. Sidewalk width shall be four (4) feet.
5. Bidder responsible for actual measurements.
6. East-west walk shall flare to existing walk.
7. Remove section of existing wooden playground border in area where sidewalk ramp enters into playground surfacing.
8. North-south walk shall include a concrete ramp into the playground surfacing with approx. 8 percent slope.
9. See concrete detail.

| | | | |
|--------------------|--------------|-----------------------------------|-------------|
| HENRY MICHAEL PARK | | CHAMPAIGN PARK DISTRICT | |
| CHAMPAIGN, IL | DANIEL OLSON | CREATE DATE: 02/24/24 | PRINT DATE: |
| SHEET | | NOT DRAWN TO SCALE – CONCEPT ONLY | |
| CPD 2 | | | |



CONCRETE COMPLIANCE

1. Shelter concrete footers shall be built according to manufacturer's recommendations.
2. Excavate to proper depth to ensure ADA compliance of no more than a two percent cross slope and 4 percent running slope on all concrete surfaces.
3. Base material shall be six (6) inches of compacted CA6
4. Concrete areas shall be six (6) inches of PCC for shelter slab and sidewalks.
5. New concrete shall be dowelled into existing concrete on east-west walkway.



CONCRETE FINISH

1. All concrete surfaces shall be broom finished, receive curing compound and be protected from vandalism until concrete is set up.
2. All sidewalks to be window-boxed at edges.
3. East-west sidewalk shall flare into existing sidewalk.
4. Sidewalk transverse control joints shall be troweled to a minimum of 1/4 inch deep and placed no more than every six (6) feet along walkways.

CHAMPAIGN PARK
DISTRICT

PRINT DATE:

CREATE DATE:

DANIEL OLSON

HENRY MICHAEL PARK

CHAMPAIGN, IL

SHEET

CPD 3



CHAMPAIGN PARK DISTRICT

REPORT TO PARK BOARD

FROM: Sarah Sandquist Executive Director

DATE: March 27, 2024

SUBJECT: Champaign Parks Foundation (Foundation) 3rd Quarter Financial Analysis for Fiscal Year 2024

Background

Attached is the Foundation financial update for the nine months ended January 31, 2024 for discussion purposes. To provide better communication and transparency on the sources and uses of funds, attached is the fiscal report as of and for the nine months ended January 31, 2024 detailed by restriction.

The detailed report shows by purpose of restriction, 5/1 beginning balance, current month and year-to-date revenues and expenses, and the ending balance.

Year to date revenue is \$496,147 compared to \$1,157,260 in the prior year. Year to date expense is \$125,425 compared to \$164,854 in the prior year.

See attached reports for further details.

Recommended Action

For discussion purposes only.

Prepared by:

Cynthia Mattingly
Interim Director of Finance

Reviewed by:

Sarah Sandquist, CPRE
Executive Director

Revenue and Expenses
Quarter Ending 01/31/2024
Champaign Parks Foundation

| ACCOUNT | DESCRIPTION | YTD BALANCE 01/31/2024 | YTD BALANCE 01/31/2023 | YTD BALANCE DIFF FY24 v FY23 |
|-----------------|---|---------------------------|---------------------------|---------------------------------|
| Revenues | | | | |
| | CONTRIBUTIONS/SPONSORSHIPS | 457,323.0 | 1,153,786.00 | (696,463.00) B |
| | TICKET SALES TIES & TENNIES | 10,200.00 | 0.00 | 10,200.00 A |
| | INTEREST INCOME | 28,486.00 | 3,478.00 | 25,008.00 C |
| | REALIZED GAINS (LOSSES ON INVESTMENTS | 138.00 | (4.00) | 142.00 |
| | TOTAL REVENUES | 496,147.00 | 1,157,260.00 | (661,113.00) |
| Expenses | | | | |
| | CONTRACTUAL | 29,771.00 | 58,704.00 | (28,933.00) |
| | COMMODITIES/SUPPLIES | 73,403.00 | 50,387.00 | 23,016.00 |
| | CAPITAL OUTLAY | 22,251.00 | 0.00 | 22,251.00 |
| | TRANSERS TO PARK DISTRICT | 0.00 | 55,763.00 | (55,763.00) |
| | TOTAL EXPENDITURES | 125,425.00 | 164,854.00 | (39,429.00) D |
| | TOTAL REVENUES - FUND 98 | 496,147.00 | 1,157,260.00 | (661,113.00) |
| | TOTAL EXPENDITURES - FUND 98 | 125,425.00 | 164,854.00 | (39,429.00) |
| | NET OF REVENUES & EXPENDITURES | 370,722.00 | 992,406.00 | (621,684.00) E |

A Gross Ticket Sales for Ties & Tennis year-to-date is \$10,200 with total year-to-date revenue of \$70,663.

B YTD Q3-2023 included payouts benefitting the VT Restoration Fund from FedEx (\$25K), a death benefit (\$123K) and the Joyce Hilgert Trust (\$424K); whereas current year is \$0.
YTD Q3-2023 single anonymous donor sponsorship for Douglas Park Project was \$300K, whereas in current year it is \$200K.
YTD Q3-2023 Sponsorships received through third quarter is \$34,600 for Ties & Tennies Gala, whereas prior year was \$0.

C Increased interest rates over prior year.

D Year-to-date expenses include \$22,495 for Ties & Tennis which is split between contractual and commodities and accounts for all the majority of the 3rd quarter expenses.

E Of the year-to-date net income through January 31, 2024; approximately \$48K will be transferred to the Park District for Scholarships from donations and net proceeds from the special event.