

**CONTRACT FOR THE PURCHASE OF HVAC EQUIPMENT**

This Contract for the Purchase of HVAC Equipment ("Contract"), made this \_\_\_ day of \_\_\_\_\_, 2017 (the "Effective Date"), by and between the Oak Brook Park District, an Illinois park district (the "Park District"), with its principal place of business at 1450 Forest Gate Road, Oak Brook, Illinois and \_\_\_\_\_, a[n] \_\_\_\_\_ corporation (the "Vendor"), with its principal place of business at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, collectively referred to as the "Parties" or individually as "Party."

**WITNESSETH**

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

**1. Services**

The Vendor shall provide all the following supplies, material and equipment:

Two HVAC Units (the "Equipment"),

as indicated in the plans and specifications in the Contract Documents as defined in Paragraph 2 of this Contract.

**2. Contract Documents**

The Contract Documents consist of this Contract between the Park District and the Vendor and the Invitation to Bid, Instructions to Bidders, General Conditions, and Specifications dated May 30, 2017 (the "Bid Documents"), attached to and incorporated as part of this Agreement by reference, the Vendor's Proposal, dated \_\_\_\_\_, 2017, attached to and incorporated as part of this Agreement as **Exhibit A**, the Contractor Compliance and Certification and References, attached to and incorporated as part of this Agreement as **Exhibit B**, and any addenda issued prior to the execution of this Contract and any modifications issued after the execution of this Contract. Modifications to this Contract may only be made in writing and endorsed by the Parties. All of the terms, conditions and specifications contained in the Bid Documents are incorporated herein.

**3. Contract Sum and Payment**

The Park District shall pay the Vendor \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for the proper performance of the Contract (the "Contract Sum"). Payment of the Contract Sum shall be made in full after receipt of the Equipment, in accordance with the Local Government Prompt Payment Act (50 ILCS 505/1 *et seq.*), and only upon inspection and acceptance of the Equipment by the Park District.

**4. Term**

This Contract shall begin upon the Effective Date and terminate upon completion of any and all applicable warranty periods, unless terminated earlier as provided herein.

**5. Delivery**

Vendor will arrange for delivery of the Equipment through a carrier chosen by Vendor, the costs of which shall be F.O.B. Oak Brook, Illinois. Vendor shall deliver the Equipment to the District's Family Recreation Center, 1450 Forest Gate Road, Oak Brook, Illinois on or before August 31, 2017.

**6. Title and Risk of Loss**

Vendor shall not grant rights in or to, or otherwise encumber the Equipment or any parts of the Equipment, to, in or by any third parties at any time, that would impair or delay the full exercise by Park District of any of its rights or remedies under the Contract. Clean and unencumbered title to the Equipment shall be transferred to the Park District upon acceptance of the Equipment by the Park District. Title to, and the risk of loss, injury or destruction from any casualty to the Equipment, regardless of cause, will be the responsibility of the Vendor until the Equipment has been received, inspected and accepted by the Park District.

**7. Acceptance and Rejection**

The Park District will have the right to inspect the Equipment upon receipt and to reject the nonconforming or damaged Equipment within ten (10) business days after delivery. The Park District will give notice to Vendor of any rejection of the Equipment or claim for damages on account of condition, quality or grade of the Equipment.

Neither inspection nor acceptance by the Park District shall act as Park District's acceptance of any defects or deficiencies in the Equipment or the failure of the Equipment to conform to the requirements of the Contract Documents and shall not act as a waiver of any rights Park District has with respect to such defects, deficiencies or failure, including rights under any warranty.

**8. Performance of the Contract**

Vendor agrees to perform all work and services in a good and workmanlike manner. All materials supplied by Vendor shall be new materials of the like and kind specified. Defective materials and equipment, including those damaged during installation or testing will not be accepted, and must be replaced or repaired in a manner satisfactory to the Park District.

Vendor, upon the Effective Date, shall immediately place orders for materials and otherwise commence performance of this Contract, unless otherwise directed by the Park District. No claim for extras shall be allowed unless such claim is first submitted in writing to the Park District and approved in writing by an authorized agent of the Park District.

## 9. Termination

The Park District may terminate this Contract as follows:

- a. Prior to the delivery of the Equipment, the Park District may, at any time, terminate the Contract in whole or in part for the convenience of the Park District and without cause. Termination by the Park District under this Paragraph 9 shall be by a notice of termination delivered to the Vendor specifying the extent of the termination and the effective date of said termination. Upon receipt of a notice of termination, the Vendor shall immediately, in accordance with instructions from the Park District: (1) cease operation as specified in the notice; (2) place no further orders; (3) enter into no further subcontracts for materials, labors, services or facilities except as necessary to complete continued portions of the Contract; (4) terminate all subcontracts and orders to the extent they relate to the work and services terminated; (5) proceed to complete the performance of work and services not terminated; and (6) take actions that may be necessary or that the Park District may direct, for the protection and preservation of the terminated work and services. In the event of termination for convenience by the Park District, the Vendor shall recover payment for approved work properly performed by Vendor before the effective date of termination. Vendor shall not be entitled to damages resulting from termination for convenience under this Paragraph.
- b. If Vendor fails to provide the Equipment and services as required in the Contract Documents, or otherwise breaches or defaults under any provision of this Contract and does not remedy such failure, breach or default within three (3) business days after demand from the Park District to take corrective action, or in the event of repeated or multiple failures or defaults by Vendor, the Park District may terminate this Contract and enter into an agreement with another vendor or vendors to provide the Equipment. In such event, Park District shall not be liable to Vendor for all or any portion of the Contract Sum. Vendor shall be liable to the Park District and shall pay the Park District promptly upon demand the increased cost to the Park District of obtaining the Equipment from the substitute vendor(s), including, without limitation, the cost of labor and materials associated with the preparation of bid documents, advertising and attorney's fees.
- c. If Vendor is adjudged as bankrupt, or if Vendor makes a general assignment for the benefit of Vendor's creditors, or if a receiver is appointed on account of Vendor's insolvency, or if any provision of the bankruptcy law is invoked by or against Vendor, then notwithstanding

any other rights or remedies granted the Park District, the Park District may, without prejudice to any other right or remedy, (i) immediately terminate the retention of Vendor and/or (ii) finish or cause to be finished the Vendor's services required under this Contract by whatever method and by whichever persons the Park District deems expedient. In such case, Vendor shall not be entitled to receive any payment until the work and/or services are completed. If the unpaid balance of the Contract Sum exceeds: (1) the expenses of completing the work and/or services, including compensation for additional managerial and administrative services, plus (2) the Park District's losses and damages because of Vendor's default (collectively "Park District Expenses and Damages"), such excess shall be paid to Vendor. If the Park District Expenses and Damages exceed such unpaid balance, Vendor shall pay the difference to the Park District promptly on demand and the Park District may resort to any other rights or remedies the Park District may have by law or under this Contract.

**10. Correction of Deficiencies**

If the Vendor defaults or neglects to provide the Equipment in accordance with the Contract Documents and fails, within a three (3) business day period after receipt of written notice from the Park District, to commence to cure said default, the Park District may, without prejudice to other remedies, correct said deficiencies. In such case, the Park District shall deduct from payments then or thereafter due the Vendor the cost of correcting such deficiencies, including compensation to the Park District for any and all expenses related thereto. If the amount deducted by the Park District exceed the payments then or thereafter due the Vendor, the Vendor shall pay the difference to the Park District.

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

**11. Tax Exemption**

The Park District is exempt for the Illinois Retailer's Occupational Tax, the Illinois Use Tax and the Federal Excise Tax as an exempt entity under the Internal Revenue Code. The Park District's tax exemption identification number is\_\_\_\_\_.

**12. Vendor's Representations**

The Vendor hereby specifically acknowledges and declares, and the execution of this Contract by the Vendor is a representation of the Vendor that the Contract Documents are full and complete, are sufficient to have enabled the Vendor to determine the cost of the Equipment and that the Contract Documents are sufficient to enable it to supply and deliver the Equipment outlined therein, in accordance with applicable laws and regulations, and otherwise

to fulfill all its obligations hereunder, including, but not limited to, Vendor's obligation to supply the Equipment for an amount not in excess of the Contract Sum.

The Vendor shall carefully study and compare the Contract Documents with each other and with information furnished by Park District and shall immediately report to the Park District errors, inconsistencies or omissions discovered. The Vendor shall not be liable to the Park District for damage resulting from errors, inconsistencies or omissions in the Contract Documents that could not have been discovered by a reasonably prudent and experienced Vendor in advance. If the Vendor performs any activity involving an error, inconsistency or omission in the Contract Documents that Vendor recognized or reasonably should have recognized and of which Vendor failed to notify the Park District, the Vendor shall assume complete responsibility for such performance and shall bear the full amount of the attributable costs for correction of the same.

Vendor further represents that it has full right, title and authority to transfer the Equipment to the Park District and that such transfer, upon delivery to the Park District, shall not be subject to the right or interest of any third party whatsoever.

### **13. Warranties**

The Vendor warrants to the Park District that the materials and equipment furnished under the Contract will be of the best quality and new, that the Equipment will be free from defects and deficiencies, and that the Equipment will conform to the requirements of the Contract Documents. Equipment that does not conform to these requirements, including any substitutions not properly approved and authorized, may be considered defective. Any such defects must be corrected, either through repair or replacement, at Vendor's expense.

Vendor guarantees the standard manufacturer's warranty and shall provide the Park District with two (2) copies of any such warranty. Liability or refusal of a subcontractor responsible for the defective materials, equipment or goods to correct the same shall not excuse the Vendor from performing under the warranty. If required by the Park District, the Vendor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

All warranties shall include labor and materials and shall be signed by the manufacturer or subcontractor as the case may be, countersigned by the Vendor and delivered to the Park District upon delivery of the Equipment. Any warranties issued in Vendor's name shall be assigned to the Park District.

Warranty shall become effective upon the Park District's final acceptance of the Equipment. Final acceptance shall occur only after the Equipment has been delivered, inspected and accepted by the Park District. No warranty herein shall be deemed waived upon Park District's inspection and acceptance of delivery of the Equipment.

### **14. Insurance**

- a. Vendor agrees to provide and keep force at all times during this Contract, the following coverages: comprehensive general liability insurance including contractual liability coverage, with minimum limits of not less than one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) annual aggregate; property damage insurance; full Worker's Compensation Insurance equal to the statutory amount required by law; and employers liability insurance with limits of not less than one million dollars (\$1,000,000); business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos. All insurance carriers providing the coverage set forth herein shall have a rating of A: VII as assigned by A.M. Best & Co. All certificates of insurance in connection herewith shall be furnished to the Park District upon the Park District's request.
- b. All insurance coverage provided by Vendor shall be primary coverage as to the Park District. Any insurance or self-insurance maintained by the Park District shall be excess of Vendor's insurance and shall not contribute with it.
- c. The Park District, its officers, agents and employees are to be covered as additional insureds under the general liability insurance. The coverage 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.
- d. Should any of the above described policies be cancelled before the expiration date thereof, Vendor shall provide prompt notice to the Park District, which notice shall not be less than 30 days prior to such cancellation. Such cancellation shall be grounds for the Park District to immediately cancel this Agreement.
- e. Vendor shall cause each subcontractor employed by Vendor to purchase and maintain insurance as required hereunder.

## **15. Indemnification**

To the fullest extent permitted by law, Vendor shall indemnify and hold harmless the Park District and their officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses including but not limited to legal fees (attorney's and paralegal's fees and court costs), arising out of or resulting from the performance of Vendor's work, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, other than the work itself, including the loss of use resulting there from and (ii) is caused in whole or in part by any wrongful or negligent act or omission of the Vendor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except to the extent it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or

otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph. Vendor shall similarly protect, indemnify and hold and save harmless the Park District, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Vendor's breach of any of its obligations under, or the Vendor's default of, any provision of the Contract.

**16. No Liability**

The Park District is not responsible or liable for any injury, damages, loss or costs sustained or incurred by any person including, without limitation Vendor's employees, or for any damage to, destruction, theft or misappropriation of any property, relating in any way, directly or indirectly, to Vendor's services and obligations under this Contract. The Park District is not liable for acts or omissions of Vendor or any of Vendor's employees, contractor's, agents or other persons purporting to act at the direction or request, on behalf, or with the implied or actual consent, of Vendor.

**17. Extension of Time**

Extension of time provided for the supply and delivery of the Equipment shall be the Vendor's sole remedy for delay unless the same shall have been caused by acts constituting intentional interference by Park District with Vendor's obligations hereunder and where to the extent that such acts of the Park District continue after Vendor's written notice to the Park District of such interference. The Park District's exercise of any of its rights under the Contract, regardless of the extent or number of changes, or the Park District's exercise of any of its remedies of suspension of any work or services, or requirement of correction or re-execution of any defective Equipment, shall not under any circumstances be construed as intentional interference with Vendor's obligations under this Contract.

**18. Independent Contractor**

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

**19. No Third Party Beneficiary**

This Contract is entered into solely for the benefit of the contracting parties, and nothing in this Contract is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and/or entity who is not a party to this Contract or to acknowledge, establish or impose any legal duty to any third party. Nothing herein shall be construed as an express and/or implied waiver of any common law and/or statutory immunities and/or

privileges of the Park District and/or the Vendor, and/or any of their respective officials, officers and/or employees.

**20. Assignment**

This Contract is non-assignable in whole or part by the Vendor, and any assignment shall be void without prior written consent of the Park District.

**21. Waiver**

Waiver of any of the terms of this Contract shall not be valid unless in writing and signed by the Parties. The failure of the Park District to enforce the provisions of this Contract or require performance by Vendor of any of the provisions shall not be construed as a waiver of such provisions or affect the right of the Park District to thereafter enforce the provisions of this Contract. Waiver of any breach of this Contract shall not be held to be a waiver of any other or subsequent breach of contract.

**22. Time**

Time is of the essence for all matters concerning this Contract.

**23. Compliance with Laws; Permits.**

Vendor shall comply with all federal, state, county and local laws, ordinances, rules and regulations in performing this Contract. All materials, supplies and equipment provided under this Contract must comply with all federal, state, county and local laws, ordinances, rules, regulations and orders that in any manner affect the production, sale, transportation and handling of the product or service contained herein. Vendor shall be responsible for obtaining all permits and license required to perform its obligations under this Contract. Lack of knowledge on the part of the Vendor will in no way be cause for release of this obligation. The Park District reserves the right to terminate any contract and pursue any other legal remedies deemed necessary if it becomes aware of violation of any laws on the part of the Vendor.

**24. Governing Law; Venue**

This Contract and the other Contract Documents shall be governed by and construed in accordance with the laws of the State of Illinois. Any actions for enforcement of this Contract by any Party hereto shall be brought only in the Eighteenth Judicial Circuit Court of DuPage County, Illinois.

**25. Entire Agreement; No Amendment**

This Contract contains the entire agreement between the Parties, and no statement, promise or inducement made by either Party to the agency of the other Party that is not contained in this written Contract shall be valid or binding. No amendment or modification shall be made to this Contract unless it is in writing and signed by both Parties.



**26. Headings**

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

**27. Severability**

If any provision of this Contract is declared invalid or unenforceable, the remainder of this Contract shall continue in full force and effect, to the extent not affected by the invalid or unenforceable provision.

**28. Notice**

Any notice required to be given by this Contract shall be deemed sufficient if made in writing and is sent by certified mail, return receipt requested, or by personal service, to the persons and addresses indicated below or to such other addresses as any party hereto shall notify the other party of in writing pursuant to the provisions of this subsection:

FOR THE PARK DISTRICT:

Oak Brook Park District  
1450 Forest Gate Road  
Oak Brook, Illinois 60523-2159  
Attn: Executive Director

FOR THE VENDOR:

IN WITNESS WHEREOF the Parties hereto have set their respective hands and seals and year first above written.

OAK BROOK PARK DISTRICT

By:

\_\_\_\_\_  
President  
Board of Park Commissioners

Attest:

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Secretary  
Board of Park Commissioners

VENDOR

By:

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Its:

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