



PUBLIC NOTICE
REQUEST FOR PROPOSALS

Sealed proposals will be received, opened, and read aloud in public session for **PLAYGROUND DESIGN-BUILD** for the **CITY OF ORANGE BEACH, ALABAMA**, at **10:30 A.M. on Thursday, October 10, 2019**, at the City Hall Municipal Complex located at 4099 Orange Beach Blvd., Highway 161, Orange Beach, Alabama. Work will include the design and construction of a playground to replace the currently existing playground located at Edward H. Carroll, Sr., Kids Park, 26425 Canal Road, Orange Beach, Alabama. Qualified contractors are invited to bid.

Performance and Labor and Material Payment Bonds will be required from the Contractor. The Contractor will be required to obtain a business license from the City to operate within the Corporate Limits.

Proposal specifications may be obtained from Orange Beach City Hall, 4099 Orange Beach Blvd., Orange Beach, Alabama, Monday through Friday from 8:00 a.m. until 5:00 p.m., or downloaded from the City's website at www.orangebeachal.gov.

Sealed proposals may be mailed or delivered directly to the City of Orange Beach prior to the public opening. All sealed proposals must be clearly and legibly marked "SEALED PROPOSAL," the proposer's name, the project name, and the opening date and time. Contact Renee Eberly at (251) 981-6806 or reberly@orangebeachal.gov with any questions.

Sealed proposals must be mailed to the following address:

City of Orange Beach
Attention: City Clerk
P.O. Box 458
Orange Beach, Alabama 36561

Or hand delivered to:

City of Orange Beach
Attention: City Clerk
4099 Orange Beach Blvd.
Orange Beach, Alabama 36561

Be advised that overnight delivery by express or courier to Orange Beach is not guaranteed. Faxed proposals will not be accepted.

The most responsive, responsible proposal will be accepted with key consideration based upon best value and benefit to the public. The City of Orange Beach reserves the right to reject any and all proposals, to waive any irregularity in the proposals received, and to accept or reject any items of the proposal for the benefit of the public. No conditional proposals will be accepted. No proposal may be withdrawn for a period of sixty (60) days after the scheduled closing date and time for the receipt of proposals.

THE CITY OF ORANGE BEACH, ALABAMA



REQUEST FOR PROPOSALS
Requisition No. 2019-1011

- REQUEST FOR PROPOSAL DATE: **September 13, 2019**
- PROPOSAL TITLE: **Playground Design-Build**
- PLACE OF PROPOSAL OPENING: **City of Orange Beach, City Hall, 4099 Orange Beach Blvd.**
- PROPOSAL MUST BE RECEIVED BEFORE: **October 10, 2019 at 10:30 A.M. (Central)**
- PROPOSALS WILL BE PUBLICLY OPENED: **October 10, 2019 at 10:30 A.M. (Central)**

Sealed proposals will be received by the City of Orange Beach at the Office of the City Clerk located at Orange Beach City Hall until the above time and date at which time they will be opened as soon thereafter as practicable.

NOTE: For this proposal to be considered responsive, all information in this section should be supplied, as appropriate, or the entire proposal may be disqualified. Proposal response must be in ink or typed with original signature. No errors will be corrected after proposals are opened. No prices shall include State or Federal Exercise Taxes; tax exemption certificates furnished upon request. The City of Orange Beach reserves the right to accept or reject all proposals or any portion thereof.

ALL PROPOSALS MUST BE RETURNED AS FOLLOWS:

All proposers must use the proposal form and show on the envelope "SEALED PROPOSAL," the proposer's name, the project name, and the opening date and time. Each proposal must be in a separate envelope.

U.S. Postal Service
City of Orange Beach
Attention: City Clerk
P.O. Box 458
Orange Beach, Alabama 36561

Courier (UPS, FedEx, etc.)
City of Orange Beach
Attention: City Clerk
4099 Orange Beach Blvd.
Orange Beach, Alabama 36561

For questions, please contact:
Renee Eberly, City Clerk/Procurement Officer at 251-981-6806 or reberly@orangebeachal.gov

All questions that require an addendum should be emailed no later than 5:00 P.M. on October 2, 2019.

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PROPOSAL SPECIFICATIONS

A. Project Location

The Orange Beach Edward H. Carroll, Sr., Kids Park is located at 26425 Canal Road, Orange Beach, AL 36561.

B. City Staff Contact

The City's staff contact for this project shall be the Public Works Director:

Tim Tucker, ttucker@orangebeachal.gov, (251) 974-5492

C. Pre-Proposal Conference

There will be no pre-proposal conference for this project.

D. Work Schedule

After contract award, the Contractor shall coordinate the work schedule with the Public Works Director. Any modifications to the work schedule shall be first approved by the Public Works Director.

E. Coordination

The Contractor shall coordinate all work with the Public Works Director and designated City Staff. The intent is for all work to be completed in a manner to minimize the amount of time the Kids Park is closed to patrons. It is the responsibility of the Contractor to coordinate the work as to eliminate or minimize any delay, obstruction, disruption, or interference to public areas surrounding the Kids Park.

F. Project Description

The City of Orange Beach is a coastal tourist resort destination with a permanent population of around 6,000 with seasonal population peaking at nearly 150,000. Proposed playground designs shall comply with ASTM playground standards and serve the needs of both the permanent and tourist populations. Proposed equipment shall be constructed of commercial-grade materials suitable for a sunny, humid, salt-air coastal environment. Common problems in the past have included rust, rot, mold, and sun bleaching. The City is looking for a solution that mitigates these issues.

The City is seeking to redesign and replace the existing Kids Park playground. The existing Kids Park playground is approximately 13,300 square feet – see attached aerial photo. The new playground should fit into the existing footprint. The City has not yet set a final budget for this project and is interested in exploring available options. Three price points have been set for evaluation purposes – low (up to \$200,000), midrange (up to \$500,000), and high (up to \$750,000). The City prefers higher grade materials even if that means less equipment and more open green space as opposed to having more equipment but sacrificing quality.

Desired features include the following:

1. Incorporation of existing trees.
2. Incorporation of open green space(s).
3. Shade structures, including shaded seating area(s) for parents and caretakers. Shade structures should be wind-rated for a minimum of 50 mph winds and have a user-friendly system for removal.
4. Design and equipment that stimulate physical and imaginative play.
5. Low maintenance costs for equipment and fall material/surfacing.
6. Incorporation of a nautical/coastal theme.

G. Playground Certifications, Guidelines, Rules and Regulations

Proposed playgrounds shall meet the following certifications, guidelines, rules and regulations:

1. ADA (Americans with Disabilities Act)

2. CPSC (U.S. Consumer Product Safety Commission)
3. ASTM (American Society for Testing and Materials) Playground Standards (latest edition)
4. IPEMA (Internal Play Equipment Manufacturers Association) Certification

H. Scope of Work

1. Contractor is responsible to provide a complete design, construction, and installation of a new Kids Park playground in this scope of work, including all labor, materials, tools, supervision, and equipment necessary to complete the Work. Restroom facilities are available onsite.
2. Contractor is responsible for providing design options that conform to industry standards, including safety requirements regarding spacing of equipment, fall material, and structural components. No construction shall begin until the final design has received approval from the City, and the City issues the Contractor a Notice to Proceed. The Contractor understands that there will be some coordination with City officials and City staff on developing playground design, but the City will rely on the Contractor to provide professional recommendations on design, equipment, and viable configurations.
3. The City shall be responsible for demolition of the existing playground.
4. The City shall be responsible for perimeter fencing. The Contractor shall be responsible for any interior fencing, if needed to separate play areas.
5. The specific items included as part of this scope of work are listed for emphasis only and are not intended to limit the scope of work in any way.
6. The Work of this contract is hereby further clarified and defined. In accordance with the nature of this contract, this clarification does not relieve the Contractor from providing all elements of a complete system that conforms to the requirements of the Contract Documents. It is the Contractor's responsibility, based on their expertise and knowledge of the work, to include all items, materials, and procedures necessary to complete the execution of the work that, although not shown, can be reasonably inferred to be a part of the work.
7. Contractor is responsible to supply and install all work in accordance with all applicable codes and manufacturer and industry standards.
8. Contractor's price includes:
 - a) All taxes associated with this scope of work;
 - b) All salaried and field personnel required to complete the work;
 - c) All permits required for this work; and
 - d) Contractor acknowledges that multiple mobilizations may be required and has accounted for all costs in the lump sum price.
9. The City will waive fees related to obtaining required building permits for this project, but the permit procedures must still be followed.
10. Contractor is responsible for all material handling required to perform this scope of work.
11. Contractor shall coordinate delivery of material with the Project Schedule and the City. Contractor shall properly store all materials and equipment per the manufacturer's recommendations in the event that materials or equipment are delivered prematurely.
12. Contractor is responsible for all field measurements required to complete all installations.
13. Contractor is responsible for all layout required to complete all installations.

I. Storage of Materials

All equipment and materials may be stored only at the location(s) approved by the City. It is expressly noted that no payments will be made for materials stored off-site.

J. Disposal of Materials

Any waste and excess materials shall be disposed of by the Contractor in a safe manner conforming to all Federal and State Occupational and Environmental Laws and Regulations including, but not limited to, the Occupational Safety and Health Act (OSHA), the Clean Air Act (CAA), the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), the Toxic Substances Control Act (TSCA), and the Alabama Department of Environmental Management (ADEM) Regulations.

PROPOSAL REQUIREMENTS

Each proposal submitted **MUST** include the following sections arranged in the following order:

Section A: Contractor Information

This section is to contain the completed “Contractor Information Form” included in these documents.

Section B: Design Proposal

This section is to contain the design proposal including a list of all elements comprising the playground, including equipment, fall material, and a preliminary mockup of the playground layout.

For each piece of equipment and type of material used, the Contractor should clearly indicate the following:

- Make and Model Number
- Description
- Unit Cost
- Quantity
- Total Price

Warranties shall be provided in writing and shall specify any and all exclusions, including parts and labor. If such warranties are provided at additional cost, the incremental cost must be so specified. The procedure necessary to notify such warranty must be specified. Any additional charges related to the utilization of the warranty provided must be specified.

Section C: Pricing Sheet

This section is to contain the completed “Pricing Sheet” included in these documents. This “Pricing Sheet” is intended to provide quick comparative information regarding the total cost for this project to City personnel. Other aspects of pricing such as unit costs, discounts, etc., should be included in Section B as indicated above.

Section D: Experience and References

This section is to summarize two (2) of the Contractor’s past projects which were similar to this project in terms of size and scope. The summary is to include a brief description of the project, pictures of the completed projects, the name of the client, the address of the client, and the name, title, and telephone for a contact person.

Section E: Contractor’s Role

This section is to include the explanation of the work that the Contractor will do on this project and the work that the Contractor will expect the City to do. It is understood that the work of the Contractor will be finalized at the time an Agreement is developed. The purpose of this section is to obtain a general idea of how the Contractor will approach this project based on the information presented in this RFP.

Section F: Special Considerations

Please describe any special features, advantages, or characteristics of your proposal not addressed above that make it particularly advantageous for the City to select your design and build proposal for the Kids Park playground. For example, this may include design highlights, features of particular equipment proposed, or business practices of the manufacturer that set it apart for competitors.

Number of Submittals: Please include one (1) original and three (3) copies of all specifications and pricing.

SECTION A: CONTRACTOR INFORMATION FORM

Contractor Name: _____

Contact Name: _____

Title: _____

Street Address: _____

City, State, Zip: _____

Phone: _____

Email: _____

AL Contractors License No.: _____

The proposer acknowledges receipt of the following addenda covering revisions to the proposal documents, and states that the costs, if any, of such revisions have been included in the base proposal and other prices quoted herein:

Addendum No. _____ Dated: _____

Addendum No. _____ Dated: _____

Addendum No. _____ Dated: _____

Addendum No. _____ Dated: _____

Note: If no addenda have been received, write in "none."

I have reviewed all of the general information and specifications in the RFP, have reviewed the work site, have contacted the City regarding any needed clarifications, and submit this proposal with a full understanding of the specifications.

If selected by the City as the Contractor, I agree to abide by the terms and conditions specified in this RFP.

Company Officer Name: _____

Title: _____

Signature: _____

Date: _____

Phone: _____

SECTION C: PRICING SHEET

This form is intended as a quick reference for the City to evaluate the cost for the entirety of the Playground Design-Build proposed. Detailed pricing information is required to be included in Section B, as described by "Proposal Requirements." Additional costs required by the Contractor but not covered specifically in this RFP must be included on this Pricing Sheet and also articulated in the detail pricing information submitted in Section B.

As described in the project description, the City is exploring a range of price points. Please give three options falling within the City's stated low, midrange, and higher possible project budgets.

LOW PRICED OPTION (<\$200,000):

<p style="text-align: center;"><u>Total Design Proposal:</u></p> <p style="text-align: center;">\$ _____</p>	<p style="text-align: center;"><u>Total Construction & Equipment Costs:</u></p> <p style="text-align: center;">\$ _____</p>
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<p><u>Total "Low" Project Value:</u> (Sum of Design & Construction)</p> <p style="font-size: 1.2em;">\$ _____</p>
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MIDRANGE PRICED OPTION (\$200,000-\$500,000):

<p style="text-align: center;"><u>Total Design Proposal:</u></p> <p style="text-align: center;">\$ _____</p>	<p style="text-align: center;"><u>Total Construction & Equipment Costs:</u></p> <p style="text-align: center;">\$ _____</p>
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<p><u>Total "Midrange" Project Value:</u> (Sum of Design & Construction)</p> <p style="font-size: 1.2em;">\$ _____</p>

HIGHER PRICED OPTION (\$500,000-\$750,000):

<p style="text-align: center;"><u>Total Design Proposal:</u></p> <p style="text-align: center;">\$ _____</p>	<p style="text-align: center;"><u>Total Construction & Equipment Costs:</u></p> <p style="text-align: center;">\$ _____</p>
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<p><u>Total "High" Project Value:</u> (Sum of Design & Construction)</p> <p style="font-size: 1.2em;">\$ _____</p>

SPECIAL TERMS & CONDITIONS

A. Coordination

All work must be coordinated with and authorized by the City of Orange Beach

Project Contacts:

Tim Tucker, Public Works Director, (251) 974-5492, ttucker@orangebeachal.gov

Adam Roberson, Building Inspector, (251) 981-1287, aroberson@orangebeachal.gov

Ken Grimes, City Administrator / Parks & Rec Director, (251) 981-6811, kgrimes@orangebeachal.gov

B. Selection Criteria

City of Orange Beach staff will evaluate the proposals based on the following criteria:

- Compliance with RFP format and submittal requests
- Design and construction costs, including available financing options
- Overall vision, including design features and elements, safety, and uniqueness
- Quality of materials and equipment
- Contractor experience
- Responses from references, including reviews of customer service and satisfaction with final product
- Warranties offered

C. Selection Process

Each proposal received will be reviewed in accordance with the criteria stated above. One or more proposals (finalists) will be selected for further consideration. Those selected as finalists may be interviewed and allowed to present detailed information regarding the submitted proposal(s). No interview is guaranteed. Upon completion of the interviews, the successful Proposer will be selected.

City staff will then develop an Agreement with the successful Proposer and will present the Agreement to the Orange Beach City Council for approval. An award is made on execution of the written Agreement by all parties. Only the City is authorized to issue news releases relating to this RFP, its evaluation, award, and/or performance of the Agreement. In the event the City and the Contractor cannot agree on terms of an Agreement, then Agreement negotiations with the next most appropriate finalist will be made.

D. General Project Timeline

1. Project Award made by City Council
2. Notice of Award
3. Execution of Contract
4. Design Finalization
5. Notice to Proceed (clock on completion deadlines begins)
6. Construction & Completion

GENERAL TERMS & CONDITIONS

- 1.0 Any proposal that is not received by the City Clerk prior to the deadline date and time set forth will not be considered.
- 2.0 The City reserves the right to: (1) accept or reject any and all proposals, and to waive any technicalities or irregularities involving any proposal; (2) negotiate Agreement terms with the Proposer(s); (3) disregard all nonconforming, non-responsive or conditional proposals; and (4) reject the responses that do not meet the City's satisfaction.
 - 2.1 The City reserves the right to accept any proposal it deems to be in its best interest.
 - 2.2 The City may choose not to make any award, to award all components to one contractor, or to combine contractors and services as it sees fit.
 - 2.3 The City is not obligated to accept the lowest bid or the most technologically advanced proposal.
- 3.0 During the evaluation process, the City reserves the right to request additional information or clarifications from those submitting proposals, and to allow corrections of errors and/or omissions.
- 4.0 Submission of a proposal indicates acceptance by the Proposer submitting the proposal of the terms, conditions, and specifications contained in this RFP.
- 5.0 The City will not pay for any information herein requested, nor is it liable for any costs incurred by those submitting proposals. The City reserves the right to select the Proposer that will best meet the needs of the City. Proposers and/or proposals that do not meet the stated requirements will be considered in noncompliance and will be disqualified unless the City waives such noncompliance.
- 6.0 No proposal may be withdrawn for a period of sixty (60) days after the deadline set for receipt of proposals.
- 7.0 All Proposers shall acknowledge receipt of any addenda to this RFP. Failure to acknowledge receipt of any addenda may render the proposal to be non-responsive. Changes to this RFP shall be issued only by the City in writing.
- 8.0 Under penalty of perjury, the Proposer certifies by signature on the Contractor Information Form:
 - 8.1 The Proposer has not paid nor agreed to pay any person, other than a bona fide employee, a fee or a brokerage resulting from the award of the Agreement. The City may, by written notice to a Proposer, cancel any award under this RFP if it is found by the City that gratuities, in the form of entertainment, gifts or otherwise were offered or given to any representative of the City with a view toward securing an order or other favorable treatment with respect to this RFP; and
 - 8.2 The proposal has been arrived at by the Proposer independently and has been submitted without collusion with any other vendor of materials, supplies, equipment, or services for the type described in the RFP; and
 - 8.3 The contents of this proposal have not been communicated by the Proposer; or to his/her best knowledge and belief by any of his/her employees or agents to any person not an employee or agent of the Proposer.
- 9.0 This RFP, any addenda distributed by the City, and the Contractor's response to the RFP shall become part of the contractual obligation and incorporated by reference into the ensuing Agreement(s). The requirements of the RFP shall take precedence over any conflicting language that may be present in any Agreement between the City and the Contractor.
- 10.0 All proposals become property of the City and will not be returned to the Proposer.
- 11.0 Each proposal and any clarifications to that proposal shall be signed by an officer of the Proposer or a designated agent empowered to bind the Proposer in an Agreement.

- 12.0 The Proposer is responsible for proposing their best, most competitive pricing in the initial proposal, as opportunity to negotiate or resubmit pricing may not be offered at a later time.**
- 13.0 The City is exempt from taxes. No charge will be allowed for federal, state, or municipal sales and excise taxes.
- 14.0 Contractor agrees to defend, indemnify, and hold harmless the City and its agents and/or employees from any and all claims, settlements, and judgments, including but not limited to those for personal injury, bodily injury, property damage, and/or death arising solely out of Contractor's or any of its agents, servants, and/or employees' negligent acts, and/or failure to act in the performance of this Agreement. Neither acceptance of the completed work nor payment therefore shall release Contractor of its obligation under this paragraph.
- 15.0 Neither party will be held responsible for nonperformance or delay caused by acts of God, natural disasters, vandalism, war, or other conditions beyond its control. Contractor shall be held accountable for manufacturer's delays in providing equipment or services proposed under this Agreement.
- 16.0 This Agreement may be amended, at any time, by mutual consent of the parties. Any amendment must be in writing and signed by authorized representatives.
- 17.0 The entire Agreement between the City and Contractor shall supersede any other verbal or written agreements. The Agreement shall include, in order of precedence, the following: the City's RFP including any addenda, Contractor's response, terms and conditions negotiated before Agreement signing, any other contractual documents.
- 18.0 The City may terminate this Agreement at its convenience by giving the other party thirty (30) days written notice. Any termination shall not relieve the City of its obligations to pay Contractor for satisfactory deliverables through the effective date of termination.
- 19.0 In cases of default by the Contractor, the City shall provide Contractor with a letter defining the area(s) where performance requirements have not been met. The Contractor shall have thirty (30) days in which to meet the Agreement requirements. If the requirements have not been met after thirty (30) days, the City has the right to cancel the Agreement without penalty. If the Agreement is cancelled due to the Contractor's failure to perform, the City shall pay the Contractor only for materials delivered and/or work performed up to cancellation. The City reserves the right to retain other parties to complete the work required under the Agreement.
- 20.0 Contractor shall be responsible for the performance of its employees, agents, and subcontractors.
- 21.0 The successful Proposer will be required to obtain a City of Orange Beach Business License to operate within the City Limits. All applicable State Laws, Municipal Ordinances, and the Rules and Regulations of all authorities have jurisdiction and shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.

CONSTRUCTION PROJECT TERMS & CONDITIONS

1.0 EXECUTION OF CONTRACT

- 1.1 Within ten (10) days of Notice of Award, the Contractor shall deliver to the City proof of insurance as required by Contract Documents. All proof of insurance shall be approved by the City before the Contractor may proceed with Work.
- 1.2 The Contractor shall commence work within ten (10) days following receipt of the Notice to Proceed or on a date stipulated in the authorization to proceed.

2.0 LAWS AND REGULATIONS

The Contractor's attention is directed to the fact that all applicable State laws, Municipal Ordinances, and the Rules and Regulations of all authorities having jurisdiction over construction of the project shall apply to the Contract throughout, and they will be deemed to be included in the Contract the same as though herein written out in full.

3.0 ALABAMA LICENSE CONTRACTOR

All Contractors submitting bids in excess of Fifty Thousand Dollars (\$50,000.00) must be licensed contractors in the State of Alabama and must state their License Number on their Bid Form. Contracts less than Fifty Thousand Dollars (\$50,000.00) will not require a General Contractor's License; however, all other requirements shall remain the same.

4.0 BUSINESS LICENSE

The Contractor will be required to obtain a City of Orange Beach Business License in order to operate within the Corporate Limits.

5.0 BID BOND

All bids in excess of Fifty Thousand Dollars (\$50,000.00) shall require a bid bond equal to 5% of the contract amount or \$10,000, whichever is lesser. Bid bonds will be returned by the City after the contract has been awarded.

6.0 PERFORMANCE BOND

If the winning bid is in excess of Fifty Thousand Dollars (\$50,000.00), the Contractor shall obtain a performance bond equal to 100% of the contract amount and shall provide such bond within ten (10) days of Notice of Award.

7.0 LABOR & MATERIALS BOND

If the winning bid is in excess of Fifty Thousand Dollars (\$50,000.00), the Contractor shall obtain a Labor & Materials Payment Bond equal to but not less than 50% of the contract amount and shall provide such bond within ten (10) days of Notice of Award. The bond shall include payment of reasonable attorney's fees incurred by successful claimants in civil actions.

8.0 INSURANCE REQUIREMENTS

Contractor agrees, at its sole expense, to maintain on a primary and non-contributory basis during the life of this Contract, or the performance of Work hereunder, insurance coverages, limits, and endorsements as set out below. Contractor agrees to obtain Commercial General Liability, Business Auto Liability, Worker's Compensation, and Commercial Umbrella/Excess Liability before starting the work. Contractor also agrees to undertake the obligation to insure that all subcontractors abide by these same insurance requirements.

The Contractor agrees the insurance requirements herein as well as City's review or acknowledgment is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under this Contract.

Commercial General Liability

Contractor agrees to maintain Commercial General Liability at a limit of liability not less than \$1,000,000 Each Occurrence, \$2,000,000 Annual Aggregate. Contractor agrees its coverage will not contain any restrictive endorsement(s) excluding or limiting Product/Completed Operations, Independent Contractors, Broad Form Property Damage, X-C-U Coverage, Contractual Liability, or Cross Liability.

Business Automobile Liability

Contractor agrees to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned, and Hired Automobiles.

Worker's Compensation & Employer's Liability

Regardless of any "minimum requirements" of the State of Alabama, Contractor shall obtain Worker's Compensation insurance covering **all** workers involved in the Work. (Note: Elective exemptions or coverage through an employee leasing arrangement will violate this requirement.) Subcontractor shall also obtain Employer's Liability insurance with minimum limits of \$500,000 Each Accident, \$500,000 Disease Policy Limit, and \$500,000 Each Employee.

Commercial Umbrella/Excess Liability

Contractor agrees to maintain either a Commercial Umbrella or Excess Liability at a limit of liability not less than \$1,000,000 Each Occurrence, \$1,000,000 Aggregate. The Contractor agrees to endorse the City as an "Additional Insured" on the Commercial Umbrella/Excess Liability, unless the Commercial Umbrella/Excess Liability provides coverage on a pure/true follow-form basis, or the City is automatically defined as an Additional Protected Person.

Additional Insured Endorsements

The Contractor agrees to endorse the City as an Additional Insured on the Commercial General Liability with the following Additional Insured endorsement, or similar endorsement providing equal or broader Additional Insured coverage than:

- CG2010 10 01 – Additional Insured; Owners, Lessees, or Contractors, OR
- CG2010 07 04 – Additional Insured; Owners, Lessees, or Contractors; Scheduled Person or Organization endorsement

The name of the organization endorsed as Additional Insured for all endorsements shall read "City of Orange Beach."

Waiver of Subrogation

Contractor agrees by entering into this written Contract to a Waiver of Subrogation in favor of the City. If a policy prohibits waiving subrogation rights without an endorsement, the Contractor agrees to endorse it with a Waiver of Transfer of Rights of Recovery against Others, or an equivalent endorsement. This Waiver of Subrogation requirement shall not apply to any policy which voids coverage if subrogation is waived.

Right to Revise or Reject

The City reserves the right to revise any insurance requirement based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work/specifications affecting the applicability of coverage. Additionally, the City reserves the right, but not the obligation, to review and reject and insurance policies failing to meet the criteria stated herein, or any insurer(s) providing coverage, due to its poor financial condition or failure to operate legally in the State of Alabama. In such events, City shall provide Contractor written notice of such revisions or rejections.

No Representation of Coverage Adequacy

The coverages, limits, or endorsements required herein protect the primary interests of the City, and the Contractor agrees in no way should these coverages, limits, or endorsements required be relied upon when assessing the extent or determining appropriate types and limits of coverage to protect the Contractor against any loss exposures, whether as a result of the Project or otherwise.

Certificate of Insurance

Contractor agrees to provide City a Certificate of Insurance evidencing the above coverages. If the Contractor receives a non-renewal or cancellation or other material change notice from an insurance carrier affording coverage required herein, Contractor agrees to notify the City immediately with specifics as to which coverage is no longer in compliance. The City shall have the right, but not the obligation, of prohibiting Contractor from entering the Work site until a new Certificate of Insurance is provided to the City evidencing the replacement coverage. The Contractor agrees the City reserves the right to withhold payment to Contractor until evidence of reinstated or replacement coverage is provided to the City. If the Contractor fails to maintain the insurance as set forth herein, the Contractor agrees the City shall have the right, but not the obligation, to purchase replacement insurance, which the Contractor agrees to reimburse any premiums or expenses incurred by the City.

The Contractor agrees the Certificate(s) of Insurance shall:

1. Clearly indicate the City has been endorsed on the Commercial Umbrella/Excess Liability and Commercial General Liability policy as an Additional Insured. Clearly indicate the project name and project number.
2. Clearly indicated Certificate Holder(s) as follows:

Original to: City of Orange Beach
 Attn: City Clerk
 P.O. Box 458
 Orange Beach, AL 36561
 Fax (251) 981-1442

9.0 COMPLETION DATE

- 9.1 Unless otherwise specified by the City, the Contractor shall commence the work within ten (10) days from the date of receipt of the Notice to Proceed, and shall complete the work within thirty (30) calendar days from the date of receipt of the Notice to Proceed.
- 9.2 The completion date shall not be extended except for unavoidable delays caused by, but not limited to, fires, floods, storms, strikes, accidents, or other circumstances beyond the Contractor's control. The Contractor may request additional completion time within one week from the occurrence of the delay. The City shall be the sole judge of such "unavoidable delays," and the extent thereof. In the event that such a determination is made, the date of completion shall be extended by a length of time equal to that lost by such circumstances. The City shall not be liable to the Contractor for any damages or additional compensation as a consequence of any delay, hindrance, interference, or other similar event beyond the City's control. Failure by the Contractor to notify the City within one week from the occurrence of delay will constitute a forfeiture of any potential time extension.

10.0 LIQUIDATED DAMAGES

- 10.1 Deduction at the rate of Three Hundred Dollars (\$300.00) per day shall be made from the total Contract price for each and every calendar day beyond the thirty (30) days from the date of Notice to Proceed that the work remains not satisfactorily completed.
- 10.2 The above mentioned sum shall be deducted as Liquidated Damages. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Contractor shall pay them to the City without limiting the City's right to terminate this agreement for default as provided elsewhere herein.

11.0 DEFAULT OF CONTRACTOR

In cases of default of the contractor, the City may procure the Work from other sources and hold the contractor responsible for any excess cost occasioned thereby.

12.0 PAYMENT

The Contractor may submit an Application for Payment for provided labor and materials in accordance with the accepted Unit Prices. Payment shall be made to the Contractor within thirty (30) days of receipt and approval of Application for Payment.

REQUIREMENTS FOR CONTRACTS AND PURCHASES

Effective January 1, 2012 under the “Beason-Hammon Alabama Taxpayer and Citizen Protection Act,” Act No. 2011-535, Alabama Code (1975) Section 31-13-1, Et Seq., before entering into a contract with the City to:

1. Perform a service;
2. Perform work;
3. Provide a product;
4. Accept a grant; and/or
5. Accept an initiative

The State of Alabama requires the business entity to sign a notarized affidavit agreeing:

1. Not to knowingly employ, hire for employment, or continue to employ, any unauthorized aliens in the State of Alabama;
2. To enroll in the E-Verify Program, to verify the immigration status of every employee required to be re-verified through that system and to provide documentation of its enrollment; and
3. To require its subcontractors to comply with the above requirements.

Before any contract can be let, purchase can be made, or payment can be issued by the City of Orange Beach after January 1, 2012, the Affidavit on the reverse side of this document must be completed, notarized, and returned to our offices.

Note: Proof of enrollment in the E-Verify Program must accompany the Affidavit, unless you do not have or hire any employees.

Questions about this process may be directed to Renee Eberly, City Clerk/Procurement Officer, at (251) 981-6806 or via e-mail at reberly@orangebeachal.gov.

COMPLETED AFFIDAVIT MUST BE RETURNED IN SEALED BID.

AFFIDAVIT OF CONTRACTOR OR DIRECT VENDOR

State of _____

County of _____

Before me, a notary public, personally appeared _____ (print name) who, being duly sworn, says as follows:

As a condition for the award of any contract, grant, or incentive by the City of Orange Beach, Alabama, I hereby attest that in my capacity as _____ (state position) for _____ (state business entity/employer/contractor name) that said business entity/employer/contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama.

I further attest that said business entity/employer/contractor is enrolled in the E-Verify program.

(Attach documentation establishing that business entity/employer/contractor is enrolled in the E-Verify Program.)

Signature of Affiant

Sworn to and subscribed before me this _____ day of _____, 20_____.

I certify that the affiant is known (or made known) to me to be the identical party he or she claims to be.

Signature and Seal of Notary Public

My Commission Expires: _____

NOTICE OF AWARD (SAMPLE)

DATED:

TO:

PROJECT: **PLAYGROUND DESIGN-BUILD**

You have been awarded a contract for **PLAYGROUND DESIGN-BUILD**.

Within ten (10) days of the date of this Notice of Award, you must deliver to the City the enclosed contract documents, fully executed, signed and witnessed, and a Certificate of Insurance as follows:

- 2 originals Contract
- 1 original Performance Bond
- 1 original Labor and Material Bond
- 1 original Certificate of Insurance certifying compliance with all insurance requirements as specified in the General Conditions

Within ten (10) days after receipt of the above documents, the City will return to you one (1) fully signed original of the Contract.

You will be notified of the time and place for a preconstruction conference; your proposed work schedule must be delivered to the City at that time.

Failure to deliver the aforementioned contract documents and insurance certificate within the time specified will entitle the City to consider your bid abandoned, to annul this Notice of Award, and to declare your Bid Bond forfeited.

CITY OF ORANGE BEACH

By: _____
Renee Eberly, City Clerk/Procurement Officer

CONTRACT (SAMPLE)

THIS AGREEMENT, made and entered into the ____ day of _____, 2019, by and between _____, hereinafter called the Contractor, and the **City of Orange Beach, Alabama**, and/or its assigns, hereinafter called the Owner.

WITNESSETH:

That the Contractor, for the consideration hereinafter set out, hereby agrees with the Owner as follows:

7. That the Contractor shall perform all of the work in a satisfactory manner in accordance with the plans, specifications, bid requirements and conditions, which are attached hereto and made a part hereof as if fully contained herein, for **PLAYGROUND DESIGN-BUILD**.
8. That the Contractor shall commence the work to be performed under this agreement within the Contract Time as defined in the *General Conditions*.

All work shall be accomplished with quality in a manner which will maintain safety to life and property, and reduce to a minimum any interference with abutting property or public travel. All work shall be inspected and approved by the City Public Works Director or his designee as Owner's representatives before payment shall be made.

9. The Owner hereby agrees to pay to the Contractor for satisfactory performance of the agreement, subject to additions and deductions as provided in the contractual documents, in lawful money of the United States as follows:

_____.

10. Estimates of work completed shall be made by the Contractor each month and submitted to the Owner. Within thirty (30) calendar days after submittal by the Contractor, the owner shall make partial payments to the Contractor on the basis of the estimate of work, duly certified and approved by the City Construction Manager, and performed during the preceding calendar month by the Contractor, less ten percent (10%) of the amount of such estimate which is to be retained by the owner until all work (100%) has been satisfactorily completed in accordance with this agreement.
11. Upon substantial completion and inspection of all work covered by this agreement, payment of the Contract sum shall be made within thirty (30) calendar days, less retainage.

Said retainage shall be retained until: 1) Submission by the Contractor of evidence satisfactory to the Owner that all payrolls, material bills, and other costs incurred by the Contractor in connection with the construction of the work have been paid in full including a Waiver and Release of Lien on the form included in the Contract Documents; 2) Legal notice of advertisement of completion has been advertised four (4) consecutive weeks in some newspaper of general circulation in Baldwin County, Alabama, as approved by

City of
Orange Beach
A L A B A M A
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the Owner; 3) Final inspection by the City Public Works Director or his designee and final acceptance of the work by the Owner.

- 12. It is mutually agreed between the Owner and the Contractor that timely performance is of the essence to this Contract, and the Contractor agrees to keep a working force on the job of the size that is adequate to perform all work in accordance with the Contractor's approved work schedule.
- 13. The Contractor hereby agrees to warrant that all material and workmanship is of the quality, quantity, and character specified and shown, and that any faulty materials or workmanship made known to him within one (1) year after date of final certificate of payment shall be made good by him without additional expense to the Owner.

Failure to complete the work within the allotted Contract time will cause loss to the Owner in administrative, engineering, inspection, interest, and supervision charges. Therefore, any overrun in the Contract time, which in the opinion of the City Contract Manager is caused by undue delay, shall be charged to the Contractor at \$300.00 per day and deducted from the final payment as liquidate damages.

- 14. The Owner reserves the right to terminate the contract upon written notice to the Contractor at least five (5) days prior to said termination. In the event that the Contract is terminated, the Contractor will be compensated in accordance with the bid items of the Contract and its attachment for all approved work in place.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and date first above written in two (2) counterparts, each of which shall, without proof or accounting for the other counterpart, be deemed an original contract.

(Corporate Seal)

_____ **(Contractor)**

By: _____

Its _____

Attest: _____

Its _____

(Seal)

City of Orange Beach, Alabama (Owner)

By: _____

Tony Kennon, Mayor

Attest: _____

Renee Eberly, City Clerk



NOTICE TO PROCEED (SAMPLE)

DATED:

TO:

PROJECT: **PLAYGROUND DESIGN-BUILD**

You are hereby notified to commence work in accordance with the Agreement dated _____, 2019, on or before _____, 2019. You are to complete the work within thirty (30) consecutive calendar days, or by _____, 2019.

City of Orange Beach, Alabama (Owner)

By: _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged this _____ day of _____, 2019.

By: _____

WAIVER AND RELEASE OF LIEN (SAMPLE)

FROM:

TO: City of Orange Beach, Alabama (Owner)

PROJECT: **PLAYGROUND DESIGN-BUILD**

KNOW ALL MEN BY THESE PRESENTS:

1. The undersigned, having been employed by the **City of Orange Beach** to furnish labor and/or materials for the referenced project, does hereby waive and release any and all lien and claim or right to lien and claim against the **City of Orange Beach** on the referenced project on account of labor, services, equipment, materials, etc. furnished for the referenced project.
2. The undersigned further certifies that to the best of his knowledge and belief, there are no unsatisfied or outstanding claims of any character arising out of the furnishing of labor, equipment, services, and/or materials for the referenced project.
3. The undersigned further agree that, after execution of this document, it will indemnify, defend at its expense, and save the **City of Orange Beach** harmless from any and all claims or liens arising out of the undersigned's furnishing of labor, equipment, services, and/or materials for the referenced project.
4. The undersigned has executed this document in order to induce the **City of Orange Beach** to make final payment to and in no way acts as a release of any claim the undersigned may have against parties other than the **City of Orange Beach** arising out of the furnishing of labor and/or materials for the referenced project.

IN WITNESS WHEREOF, the undersigned has signed and sealed this instrument this ____ day of _____, 2019.

STATE OF ALABAMA
COUNTY OF BALDWIN

Personally appeared before me the undersigned Notary Public in and for said County and State, _____, who is known to me and who, after being duly sworn, deposes and says that the facts stated in the above affidavit are true.

NOTARY PUBLIC

Orange Beach Kids Park—2019

