

CONSTRUCTION AGREEMENT

THIS **AGREEMENT** (“Agreement” and/or “Contract”) is entered into this ____ day of _____, 2025 (the “Effective Date”), by and between **COUNTY LINE COMPANIES D/B/A PLAY PROS**, an Indiana limited liability company authorized to do business in Kentucky, with a principal office of 4815 S 100 W, Kokomo, Indiana 46902 (the “Contractor”), and the **CITY OF COVINGTON, KENTUCKY**, a Kentucky city of the home rule class with a principal place of business at 20 W. Pike Street, Covington, KY 41011 (the “City”).

RECITALS

WHEREAS, the City published an Invitation to Bid (ITB241201) to construct a new play structure and resurface the playground for its 35th and Carlisle Park, located at 899 W 35th Street, Covington, Kentucky 41015 (the “Site”).

WHEREAS, pursuant to Board of Commissioner’s Order No. _____, the City is authorized to enter into this Agreement with the Contractor construct a new play structure and resurface the playground at the 35th and Carlisle Park, as more particularly described in Exhibit A (the “Work”).

NOW THEREFORE, in consideration for the mutual promises contained herein, the parties agree as follows:

STATEMENT OF THE AGREEMENT

1. Compensation. That for and in consideration of the payment of a sum not to exceed **\$119,825.40** (the “Contract Price”) to be paid by the City according to the terms set forth in Paragraph 4 of this Agreement, the Contractor agrees to perform the work provided herein.

2. Work. The Contractor shall do, perform and carry out, in a satisfactory and workmanlike manner with due diligence all of the professional services and provide all of the materials necessary to perform the operations set forth in the Contract Documents. Said services and materials shall hereinafter be referred to as “the Work.” Contractor shall additionally be required to provide evidence of warranties as described in Section 10 of this Agreement.

3. Controlling Documents. The documents as listed below are generally sufficient to indicate and convey understanding of all terms and conditions for performance of the Work. Together said documents shall hereinafter be referred to as “the Contract Documents” and shall include:

- a. This Agreement
- b. **EXHIBIT A PROJECT SPECIFICATIONS** - Located in Section V of City's Invitation to Bid.
- c. **EXHIBIT B THE CONTRACTOR’S BID**
- d. **EXHIBIT C ACKNOWLEDGEMENT FORM**
- e. **EXHIBIT D SCOPE OF AGREEMENT FOR CDBG CONTRACTS**
- f. **EXHIBIT E HUD FORM 4010**
- g. **EXHIBIT F HUD FORM 2516**

h. EXHIBIT G CERTIFICATIONS

4. Payment. The City shall pay the Contract Price in two equal installments, the first half prior to Contractor beginning Work, and remaining half after Contractor has completed the Work. Payment will be made by the City's Finance Department within thirty (30) days of receipt of a detailed invoice, and upon the submission by Contractor of a completed and notarized Acknowledgment Form in a form substantially similar to that attached as Exhibit C. The City reserves the right to refuse payment if it is determined, by its Finance Director, that the monthly statement is inadequate. The City further reserves the right to refuse payment if it is determined by the City Engineer, City Manager, or their designee ("Designee") that the work performed or materials provided for the Work are inadequate or defective. If it is determined by the City's Finance Director, City Manager, or Designee, that the monthly statement is inadequate, or that work performed or materials provided are inadequate or defective, the City shall notify the Contractor and tender written explanation for such action within ten (10) days of the action. Upon receipt of such notice, the Cure provisions provided in Paragraph 15 shall apply.

5. Payment of Retainage. Reserved.

6. Contract Times. The Work will be complete by June 6, 2025, in accordance with the **PROJECT SPECIFICATIONS**.

7. Compensatory Damages. The Contractor shall reimburse the City (1) for any fines, fees or penalties imposed on the City as a direct result of the Contractor's failure to complete the Work according to the **PROJECT SPECIFICATIONS**, and (2) for the actual costs, reasonably incurred by the City for engineering, observation, inspection, and administrative services needed to complete the Work following an Event of Default.

8. Liquidated Damages. Reserved.

9. Contractor's Deliveries Prior to Work. The Contractor hereby agrees to make the following deliveries prior to the commencing the Work:

- a. Insurance. The Contractor shall furnish the City with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of insurance policies as further described in the **PROJECT SPECIFICATIONS**. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be canceled or materially altered, except after ten (10) days written notice has been received by the City of Covington, Kentucky." The Contractor covenants and agrees to keep all insurance coverage in full force and effect until completion of the Work. The City will be named as an additional insured on all liability policies.
- b. Occupational License. The Contractor shall acquire, or demonstrate prior acquisition of, a City of Covington Occupational/Business Regulatory Licenses prior to commencing the Work. The Contractor shall also ensure that any Sub-

Contractor on the Work has acquired all licenses necessary to do business in the City of Covington.

10. Contractor's Warranties, Representations, and Covenants. Upon executing this Agreement, Contractor makes the following representations and warranties:

- a. Contractor's representations and warranties made by virtue of its submission of the **CONTRACTOR'S BID** are hereby incorporated as if restated in full.
- b. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Work.
- c. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, and performance of the Work.
- d. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- e. Contractor has considered the information known to contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Work Documents; and the Site-related reports and drawings identified in the Work Documents, if any, with respect to the effect of such information observations, and documents on (1) the cost, progress and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and (3) Contractor's safety precautions and programs.
- f. Contractor represents that it has, or will have, at its own expense, all personnel required in performing the Work. Such personnel shall not be employees of, or have any contractual relationship with the City.
- g. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Time, and in accordance to the other terms and conditions of the Contract.
- h. Contractor is aware of the general nature of the work to be performed by others at the site that relates to the Work as indicated in the Contract Documents and acknowledges that the City may refuse inadequate or defective work.
- i. Contractor has given notice to the City or the Designee of any conflicts, errors, ambiguities, or discrepancies that the Contractor has discovered in the Contract Documents.

- j. Contractor provides a one-year structural warranty to cover any defects and will repair or replace free of charge any defect or parts damaged due to workmanship defects.
- k. **By signing this Agreement Contractor affirms that Contractor is aware of the prohibition against conflicts of interest, gratuities, and kickbacks as set forth is KRS 45A.455, which are incorporated by reference into this Agreement, and agrees not to violate these provisions.**
- l. Contractor shall complete the certifications attached in Exhibit G upon execution of this Agreement, and the HUD Form 2516 upon completion of the Work.
- m. The Contract Documents are generally sufficient to convey the understanding of all terms and conditions for performance and furnishing of the Work.
- n. Contractor represents that it has revealed any final determination of a violation of KRS Chapters 136 “Corporation and Utility Taxes”, 139 “Sales and Use Taxes”, 141 “Income Taxes”, 337 “Wages and Hours”, 338 “Occupational Safety and Health of Employees”, and 342 “Workers’ Compensation” by the within the previous five (5) years, and further covenants that it shall be in continuous compliance with the provisions of KRS Chapters 136 “Corporation and Utility Taxes”, 139 “Sales and Use Taxes”, 141 “Income Taxes”, 337 “Wages and Hours”, 341 “Unemployment Compensation”, and 342 “Workers’ Compensation” for the duration of this Contract.
- o. By executing this Agreement, Contractor hereby restates all representations made within the Contract Documents.

11. Kentucky Equal Opportunity Employment Law. Unless exempted by KRS 45.590, during the performance of the Agreement the Contractor agrees as follows:

- a. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age forty (40) and over, disability, veteran status, or national origin.
- b. The Contractor shall take affirmative action in regard to employment, upgrading, demotion, transfer, recruitment, recruitment advertising, lay-off, termination, rates of pay or other forms of compensation, and selection for training, so as to ensure that applicants are employed and that employees during employment are treated without regard to their race, color, religion, sex, age forty (40) and over, disability, veteran status, or national origin.
- c. The Contractor shall state in all solicitations or advertisements for employees placed by or on behalf of the contractor that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, age forty (40) and over, disability, veteran status, or national origin.

- d. The Contractor shall post notices in conspicuous places, available to employees and applicants for employment, setting forth the provisions of the nondiscrimination clauses required by this section.
- e. The Contractor shall send a notice to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding advising the labor union or workers' representative of the contractor's commitments under the nondiscrimination clauses.

12. Good Neighbor Requirements. During any construction period, Contractor shall make all reasonable efforts to mitigate disturbances to the public caused by construction. This includes, but is not limited to, avoiding obstruction of public right of ways such as streets, sidewalks, and parking areas, adequate cleanup and storage of materials and debris, and advance notice or publication of relevant construction schedules that may affect the public or City agencies. Contractor shall also make all reasonable efforts to mitigate effects of construction on air quality and noise level, including the prevention excess dust particles, the use of lower decibel equipment and machinery when feasible, and the limiting of noise generating construction activity to daytime hours. Any construction that is expected to cause an unreasonable disturbance to the public must be approved by the City.

13. City Non-discrimination ordinance. In accordance with the City of Covington's Code of Ordinances Human Rights Commission requirements, § 32.040 et. seq., Contractor agrees that it shall not discriminate on the basis of any protected class, including but not limited to: race, color, religion, sex, sexual orientation, gender identity, age, national origin, ancestry, marital status, parental status, familial status, place of birth, disability, or natural texture, color of hair, hair styles, or protective hair styles (including, but not limited to braids, locks, twists, and coverings).

14. Events of Default. The following acts shall constitute an Event of Default under this Agreement:

- a. The Contractor's failure to fully perform and carry out any of the obligations, covenants and/or conditions of this Agreement; and/or
- b. The discovery at any time after the execution of this Agreement that any representation or warranty is inaccurate or untrue.

15. Cure. Upon an Event of Default, that the City in its sole discretion deems subject to cure, the City shall provide written notice to the Contractor with a request that the Contractor cure said Event of Default within a reasonable time (the "Cure Period"). If the Contractor fails to cure said default within such reasonable time, or if the City determines that an Event of Default may not be cured, the City reserves the right to institute the Remedies provided in Paragraph 16 below.

16. Remedies. Upon the occurrence of an uncured Event of Default or an Event of Default that is not subject to cure, the City, in its sole discretion, may implement any or all of the following remedies:

- a. Terminate and cancel the Agreement;
- b. Withhold any payment that may be due, provided that such retention of any

payment due shall not release the Contractor from liability for the default;

- c. Withhold any retainage that may be held by the City, if allowable under this Agreement; and/or
- d. Contract with a third party and complete the Contract at the expense of the Contractor, or if applicable its surety.

17. Attorney's fees. In the event the City institutes any of the above remedies, the Contractor shall pay the City's attorney's fees, court costs and expenses incurred by the City as a result of the Contractor's uncured default. If City or the Designee inspects the Work and determines that a Final Payment is due Contractor, but later discovers a defective condition in work or materials, then the final payment shall not waive any rights that the City may have against the Contractor and the Contractor shall correct any defect without additional consideration.

18. Cumulative Remedies. The implementation of any or all of the remedies in Paragraph 16, shall not affect or terminate any of the rights of the City as against the Contractor then existing or which may thereafter accrue because of such default, and the foregoing provision shall be in addition to all other rights and remedies available to the City under the law, including attorneys' fees incurred in curing the default.

19. Dispute Resolution. Any dispute between the Parties arising under this Agreement, shall be subject to the following dispute resolution procedures:

LEVEL 1 The Parties shall conduct an informal mediation facilitated by the City's Designee.

LEVEL 2 Provided the Parties do not resolve any dispute in accordance with the Level 1 mediation procedure, within fourteen (14) days of the unsuccessful Level 1 mediation, the Parties shall select a mutually agreeable, neutral mediator and schedule a mediation. The Parties shall share the costs of any Level 2 mediation.

LEVEL 3 Should any dispute remain unresolved after Level 2 mediation, the dispute shall be resolved through litigation in a court of competent jurisdiction located in Kenton County, Kentucky.

20. Sub-Contracting. The Contractor hereby agrees that none of the work or services covered by this Contract shall be subcontracted without prior written approval of the City

21. Notice. All notices required or permitted under this agreement shall be in writing, and directed to the Parties at the following addresses:

- a. Any communication to the Contractor shall be deemed effective for all purposes as of the date such communication is personally delivered to or received by registered or certified mail, return receipt requested, or at such other address as may be provided in writing by the Contractor:

County Line Companies/Play Pros

Attn: Sheila Rossman
4815 S 100 W
Kokomo, Indiana 46902

- b. Any communication to the City shall be deemed effective for all purposes as of the date such communication is personally delivered to or received by registered or certified mail, return receipt requested, or at such other address as may be provided in writing by the City:

City of Covington

Attn: City Manager
Copy to: City Solicitor
20 W. Pike Street,
Covington, Kentucky 41011

22. Modification. The City may, from time to time, require changes in the Work. Such changes, including any increase or decrease in compensation, which are mutually agreed upon between the City and the Contractor, may be contingent upon approval by the Covington Board of Commissioners and shall be incorporated as written amendments to this Contract.

23. Assignment. The Contractor shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of the City.

24. Governing Law and Venue. This Agreement shall be interpreted and construed in conformity with the laws of the Commonwealth of Kentucky. Any litigation related to this contract shall take place in a court of competent jurisdiction in Kenton County, Kentucky.

25. Indemnification. The Contractor shall indemnify and hold harmless the City against any damages to property or injuries to or death of any person or persons, including property and employees or agents of the city, and shall defend and indemnify the City from any claims, demands, suits, actions or proceedings of any kind, including workers' compensation claims, of or by anyone, in any way resulting from or arising out of the Work or in connection therewith, including operations of subcontractors and acts or omissions of employees or agents of the Contractor or Contractor's subcontractors. Insurance coverage specified here and in the Contract Documents constitutes the minimum requirements and those requirements shall in no way lessen or limit the liability of the contractor under the terms of the Agreement.

26. Duty to Defend. In addition to the indemnities provided above, Contractor shall defend City, its officers, agents, and employees (i) against any suit, proceeding, claims for losses, costs, damages or expenses including, without limitation, charges for personal injury, death or property damage that arise out of any and all acts or omissions of employees or agents of the Contractor or Contractor's subcontractors in connection with the Work; and (ii) shall pay all damages, costs and expenses in connection with such actions, including City's attorneys' fees.

27. Force Majeure. Neither the City nor the Contractor shall hold the other responsible for damages or delays in performance caused by uncontrollable events, which could not reasonably have been anticipated or prevented, including without limitation, acts of God, the public enemy, acts of the United State Government or of the several states, or any foreign country, or any of them acting in their sovereign capacity, wars, riots, terrorism, rebellions, sabotage, fires, explosions or accidents not the fault of either Party, floods or other natural disasters causing materially different Site conditions, strikes, or other concerned acts of workers, lockouts, or changes in law, regulations, or ordinances.

28. Severability. In the event that any provision or portion of this Contract shall be found to be invalid or unenforceable, then such provision or portion of the Contract shall not affect the validity or enforceability of any other provision or portion of the Contract.

29. Entire Agreement. This Agreement including the Contract Documents constitutes the entire agreement between the City and the Contractor with respect to the Work. It is intended by the parties as a final expression of their agreement with respect to such terms as are included herein and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement.

30. Meaning. The terms used in this Agreement will have the meanings stated herein. This Agreement is to be construed according to the terms, conditions and promises contained herein as well as those contained in the Contract Documents, which are incorporated by reference. In the case of conflicting terms between this Agreement and **THE PROJECT SPECIFICATIONS**, this Agreement shall govern. In the case of conflicting terms between **THE PROJECT SPECIFICATIONS** and **CONTRACTOR'S BID** the **PROJECT SPECIFICATIONS** shall govern.

[Signature page follows.]

IN WITNESS WHEREOF, the **CITY** and the **CONTRACTOR** have executed this agreement as of the date first above written.

CITY OF COVINGTON, KENTUCKY

Ronald L. Washington, Mayor

Pursuant to Order No. _____

Date executed: _____

COUNTY LINE COMPANIES LLC D/B/A PLAY PROS (CONTRACTOR)

By: _____ [print name]

Its: _____

Date executed: _____