

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS AND RECREATION TO ENTER INTO AN AGREEMENT WITH GAMETIME FOR THE CONSTRUCTION OF A PLAYGROUND AT ALTON PARK, IN THE AMOUNT OF ONE HUNDRED THIRTY-FIVE THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS (\$135,875.00), WITH A FIVE PERCENT (5%) CONTINGENCY IN THE AMOUNT OF SIX THOUSAND SEVEN HUNDRED NINETY-THREE AND 75/100 DOLLARS (\$6,793.75), FOR A TOTAL AMOUNT OF ONE HUNDRED FORTY-TWO THOUSAND SIX HUNDRED SIXTY-EIGHT AND 75/100 DOLLARS (\$142,668.75).

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Administrator of the Department of Parks and Recreation be and is hereby authorized to enter into an agreement with GameTime for the construction of a playground at Alton Park, in the amount of \$135,875.00, with a 5% contingency in the amount of \$6,793.75, for a total amount of \$142,668.75.

ADOPTED: _____, 2013.

/mms

City of Chattanooga



Resolution/Ordinance Request Form

Date Prepared: March 27, 2013

Preparer: _____

Department: _____

Brief Description of Purpose for Resolution/Ordinance: _____

Res./Ord. # _____ Council District # _____

A resolution is needed authorizing the Administrator of the Department of Parks and Recreation to enter into an agreement with GameTime for construction of a playground at Alton Park in the amount of One Hundred Thirty Five Thousand Eight Hundred Seventy five (\$135,875.00) Dollars with a five percent (5%) contingency in the amount of Six Thousand Seven Hundred Ninety Three Dollars and Seventy Five Cents (\$6,793.75) for a total amount of One Hundred Forty Two Thousand six Hundred Sixty Eight Dollars and Seventy Five Cents (\$142,668.75).

Name of Vendor/Contractor/Grant, etc.	<u>GameTime</u>	New Contract/Project? (Yes or No)	<u>YES</u>
Total project cost	\$ <u>142,668.75</u>	Funds Budgeted? (YES or NO)	<u>YES</u>
Total City of Chattanooga Portion	\$ <u>142,668.75</u>	Provide Fund	<u>4015</u>
City Amount Funded	\$ <u>142,668.75</u>	Provide Cost Center	<u>L31108</u>
New City Funding Required	\$ _____	Proposed Funding Source if not budgeted	<u>761113</u>
City's Match Percentage %	_____	Grant Period (if applicable)	_____

List all other funding sources and amount for each contributor.

<u>Amount(s)</u>	<u>Grantor(s)</u>
\$ _____	_____
\$ _____	_____
\$ _____	_____

Agency Grant Number _____

CFDA Number if known _____

Other comments: (Include contingency amount, contractor, and other information useful in preparing resolution)

Approved by: _____

Reviewed by: FINANCE OFFICE

DESIGNATED OFFICIAL/ADMINISTRATOR

Please submit completed form to @budget, City Attorney and City Finance Officer

Revised: 1/26/09



**Standard Form of Agreement
Between
Owner and Contractor**

THIS AGREEMENT, is between the City of Chattanooga, Tennessee, a municipal corporation in the state of Tennessee, hereinafter called **Owner**, and

PlayCore Holdings, Inc., d/b/a GameTime,

hereinafter called **Contractor**.

WHEREAS it is the intention of the Owner to employ the Contractor to complete the scope of work for the following project:

Project Title: Alton Park Recreation Center Playground,
 Location: Alton Park Recreation Center, 100 W. 45th Street, Chattanooga, TN
 Project Description: Construction of a new playground area and modular play structure at the Alton Park Recreation Center

hereinafter called **Project**.

NOW, THEREFORE, the Owner and the Contractor, for the consideration set forth herein, agree to the following:

1. EFFECTIVE DATE

The effective date of this Agreement shall be _____, 20____.

2. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Tennessee and the codes of the City of Chattanooga.

3. WORK TO BE COMPLETED BY CONTRACTOR

Contractor shall complete the scope of work described in **Attachment A**, hereinafter called **Work**, in accordance with the drawings and specifications for the Project,

4. COMPENSATION

Owner shall pay Contractor in accordance with the **Attachment B**, Compensation.

5. OWNER'S RESPONSIBILITIES

Owner shall be responsible for all matters described in **Attachment C**, Owner's Responsibilities.

6. SUPPLEMENTAL AGREEMENTS

The provisions set forth in **Attachment D**, Supplemental Agreements, shall be incorporated into this Agreement

7. PROJECT SCHEDULE

The provisions set forth in the **Attachment E**, Project Schedule, shall be incorporated into this Agreement.

8. RATE SCHEDULE

The Contractor shall provide a schedule of unit prices, as required, for all portions of the Work. This schedule shall be incorporated into the agreement as **Attachment F**.

9. INVOICING

The Contractor will use the format established in **Attachment G**, Standard Invoice, for all requests for payment



Standard Form of Agreement Between Owner and Contractor

submitted for work on the Project and shall clearly indicate:

- a. The Contract Sum
- b. Amount of any adjustments to the Contract Sum
- c. The Contractor's percentage complete on each portion of the Work and the amount of the Contract Sum allocated to that portion of the Work
- d. Contract cost of materials and equipment delivered and stored at the site or approved location for incorporation into the Work
- e. Retainage(s) on previous and current requests for payment
- f. The Contractor's requested amount for payment.

The Contractor's requested amount for progress payments shall be computed as the sum of the following:

- a. Contractor's percentage complete on each portion of the Work multiplied by the amount of the Contract Sum allocated to that portion of the Work, less a retainage of **five percent (5%)**.
- b. Contract cost of materials and equipment delivered and stored at the site or approved location for incorporation into the Work, less a retainage of **five percent (5%)**.
- c. **Less** previous progress payments by the Owner, and
- d. **Less** reduction of previous progress payments amounts due to incomplete or non-conforming work or work that is subject to claims or litigation by the Owner.

All requests for payment shall be subject to review and approval by the Architect or the Owner's representative and shall not be considered for payment by the Owner until such approval has been received, however, upon the Owner's receipt of such approval the entire amount approved shall be due and payable within **thirty (30) days**.

The Contractor shall keep records on the basis of generally accepted accounting practice of costs and expenses which records shall be available for inspection at all reasonable times.

Upon final completion, acceptance of the Work and settlement of all claims or disputes, the Contractor shall submit a final request for payment of the remainder of the Contract Sum, including any adjustments provided by written changes or supplements to this Agreement.

10. WAIVER OF CLAIMS

The Contractor's request and acceptance of final payment as set forth herein shall constitute a Waiver of Claims by the Contractor against the Owner unless such claims have been previously made by the Contractor and acknowledged by the Owner in writing as outstanding and such claims shall be in accordance with the provisions of this Agreement.

11. STANDARD OF CARE

Contractor shall exercise a reasonable degree of care, skill, and diligence in the performance of the Work for the Project.

12. INDEMNIFICATION

Contractor hereby agrees to fully indemnify and hold harmless Owner and any of its departments, divisions, agencies, officers, employees and elected officials from all loss, damage, cost, or expenses specifically including attorneys' fees and other expenses of litigation incurred by or on behalf of the Owner and any of its officers, employees or elected officials arising out of Contractor's actual negligent performance of the Work under this Agreement, including errors or omissions.



Standard Form of Agreement Between Owner and Contractor

Owner hereby agrees to fully indemnify and hold harmless Contractor and any of its officers, employees, or designated agents from all loss, damage, cost, or expenses specifically including attorneys' fees and other expenses of litigation incurred by or on behalf of the Contractor and any of its officers, employees or designated agents arising out of Owner's negligence to the extent provided by the Tennessee Governmental Tort Liability Act, T.C.A. 29-20-201 et seq.

13. INSURANCE

The Contractor and their Subcontractors, Consultants or Material Suppliers shall not commence work on the Project prior to providing, to the Owner's satisfaction, written evidence of conformance with all insurance requirements set forth herein. Insurance shall be placed by the Contractor with one or more insurance carriers licensed to do business in the State of Tennessee. Each insurance policy shall be renewed **ten (10) days** before the expiration date of the policy.

Certificates of insurance shall be filed with the City of Chattanooga prior to commencement of the Work. These certificates shall contain a provision that coverage's afforded under the policies will not be changed or canceled unless at least **fifteen (15) days'** written notice has been given to the City. The Contract shall not be binding upon the Owner until the insurance coverage required herein has been obtained and certificates have been filed with the City.

Adequate insurance coverage shall be maintained by the Contractor at all times. Failure to maintain adequate coverage shall not relieve the Contractor of any responsibilities or obligations under these Contract Documents. In the event any insurance coverage is canceled or allowed to lapse, the Contractor will not be permitted to prosecute the work until adequate and satisfactory insurance has been obtained and certificates of insurance furnished to the City. Failure to keep insurance policies in effect will not be cause for any claims for extension of time under these Contract Documents.

All such policies shall be subject to approval by the City Attorney. Should the City Attorney at any time in his sole discretion determine that the insurance policies and certificate provided may not be sufficient to protect the interests of the City because of the insolvency of the insurance company or otherwise, the Contractor shall replace such policies with policies meeting his approval.

The Contractor shall procure and maintain at his own expense, during the Contract Time, insurance as hereinafter specified:

- a. **Workmen's Compensation Insurance** that shall protect the Contractor against all claims under applicable state workmen's compensation laws shall be maintained. The Contractor shall also be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of a workmen's compensation law. This policy shall also include an endorsement providing coverage in all states in which work is performed. The Contractor shall require all the Subcontractors to provide similar Workmen's Compensation Insurance for the entire Subcontractors' employees on the Work unless such employees are covered by the protection afforded by the Contractor. The liability limits shall not be less than that required by the statute.
- b. **General Public Liability and Property Damage Insurance** that shall be written in comprehensive form and shall protect the Contractor against all claims arising from injuries including death, to members of the Public or damage to property of others arising out of any act or omission of the Contractor or his agents, employees, or Subcontractors. In addition, this policy shall specifically insure the contractual liability assumed by the successful bidder to defend and indemnify the City of Chattanooga against such claims or suits.

The general public liability and property damage insurance shall carry an endorsement in form satisfactory to



Standard Form of Agreement Between Owner and Contractor

the Owner to the effect that the Contractor shall save harmless the Owner from any claims and damage whatsoever, including patent infringement. General public liability and property damage insurance shall be kept in force at all times during the course of the Work until such time as the Work covered by these Contract Documents has been completed and accepted by the Owner.

- c. To the extent that the Work may require blasting, explosive conditions or underground operation, the **Comprehensive General Public Liability And Property Damage Coverage** shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property.
- i. The comprehensive general public liability and property damage coverage shall also protect the Contractor against all claims resulting from damage to:
 1. Private driveways, walks, shrubbery, and plantings
 2. Public utility facilities
 3. United States Government monuments
 - ii. The liability limits shall not be less than:
 1. Bodily Injury \$500,000 each person
 \$1,000,000 each occurrence
 2. Property Damage \$250,000 each occurrence
 \$500,000 aggregate
- d. **Comprehensive Motor Vehicle Liability and Property Damage Insurance** that shall be written in comprehensive form and shall protect the Contractor against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on or off the site of all motor vehicles licensed for highway use, whether they are owned, non-owned, or hired.
- i. The liability limits shall not be less than:
 1. Bodily Injury \$250,000 each person
 \$500,000 each occurrence
 2. Property Damage \$100,000 each occurrence
- e. The Contractor shall purchase and maintain until Substantial Completion **Builder's Risk Insurance** (not All Risk Insurance) in the amount of the initial Contract Sum plus any amounts added by Change Order. The insurance shall list and include as named insured the City of Chattanooga, the Contractor, and all Subcontractors A.T.I.M.A. The deductible amount shall be \$1,000.00 for each occurrence, which shall be paid by the Contractor. The Builder's Risk Insurance shall also provide coverage for portions of the Work in transit and for temporary storage of portions of the Work to the value approved by the Owner in the Certificate for Payment.

14. PERFORMANCE AND PAYMENT BONDS (SURETY)

Performance and Payment Bonds are required for all public work (construction) contracts with a construction cost in excess of \$25,000 and Contractor shall, within **ten (10) days** of notification of Bid acceptance, furnish:

- a. **Payment Bond** in the amount of **One Hundred Percent (100%)** of the Contract Sum
- b. **Performance Bond** in the amount of **One Hundred Percent (100%)** of the Contract Sum

Performance and Payment Bonds shall be submitted on an approved form, made out to the City of Chattanooga, and shall serve as security for the faithful performance of the contractual agreement. The surety thereon must be certified by a surety company authorized and licensed to transact business in the State of Tennessee.

15. REUSE OF DOCUMENTS

All documents, including, but not limited to calculations, drawings, specifications, and computer software prepared by the Architect or Engineer for the Project are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by Contractor or others on extensions of the Project or on any other project. Any reuse without prior written verification or adaptation by the Architect or Engineer for the specific



Standard Form of Agreement Between Owner and Contractor

purpose intended will be at Contractor's sole risk and without liability or legal exposure to the Owner, Architect, or Engineer.

16. RECORDS RETENTION AND AUDIT PROVISION

The term "Contractor" is used interchangeably to describe signatories to contracts, grants, and agreements with the City and applies to reflect the relationship with the City (Contractor, Contractor, Licensee, Supplier, Vendor, Consultant, Grant Recipient, etc.).

- a. All records relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Contractor or the Contractor's subcontractors, shall be made available for inspection and copying upon written request to the Owner. Additionally, said records shall be made available, upon request by the Owner, to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the Project, its design and its construction. Said records expressly include those documents reflecting the time expended by the Contractor and its personnel to perform the obligations of this Agreement and the records of expenses incurred by the Contractor in its performance under said Agreement. The Contractor shall maintain and protect these records for no less than **seven (7) years** after the completion of the Project, or for any longer period of time as may be required by applicable law, and upon notice during the pendency of any claims or litigation arising from the Project.
- b. The Owner or its assign may audit all financial and related records (including digital) associated with the terms of the "Contract" (or Agreement) including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the Contractor. The Owner may further audit any contractor records to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the contract or agreement) or to identify conflicts of interest.
- c. The Contractor shall at all times during the term of the Contract, and for a period of **seven (7) years** after the end of the contract, keep and maintain records of the work performed pursuant to the Contract. This shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the Contractor. Documents shall be maintained by the Contractor necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. The Contractor shall at its own expense make such records available for inspection and audit (including copies and extracts of records as required) by the Owner at all reasonable times and without prior notice.
- d. The obligations of the Contractor as set forth under these Audit Provisions shall be explicitly included in the Contractor's contracts with their subcontractors, consultants, or material suppliers to the extent that those contracts relate to the fulfillment of the Contractor's obligations to the Owner.
- e. Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the Owner unless the audit identifies significant findings that would benefit the City. The Contractor shall reimburse the Owner for the total costs of an audit that identifies significant findings that would benefit the City.
- f. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the Owner may have by Federal, State, or Municipal law, whether those rights, powers, or obligations are express or implied.



Standard Form of Agreement Between Owner and Contractor

17. TERMINATION

This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement. The nonperforming party shall have **fifteen (15) calendar days** from the date of the termination notice to cure or to submit a plan for cure acceptable to the other party.

Owner may terminate or suspend performance of this Agreement for Owner's convenience upon written notice to Contractor. If termination or suspension is for Owner's convenience, Owner shall pay Contractor for all Work performed prior to the date of the termination notice. Upon restart, an adjustment acceptable to Owner and Contractor shall be made to the Project Schedule, Contract Time and Contract Sum.

In the event of the termination of the Agreement as a result of the Contractor's substantial failure to perform in accordance with the terms of this Agreement, the Owner may at its sole discretion:

1. Award the contract to the next lowest bidder, if such bidder is willing to enter the contract
2. Cover in the open market
3. Seek any other remedy provided by the Tennessee Uniform Commercial Code
4. Hold the Contractor liable for all damages provided by law, including cost of cover.

18. DELAY IN PERFORMANCE

Neither Owner nor Contractor shall be considered in default of the Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonconforming party, nor shall either party be liable for damages for delay in the Contractor's performance of the Work when such delay is the result of abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, or other civil disturbances; sabotage; judicial restraint; discovery of unanticipated hazardous wastes; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency or by any other circumstances beyond their control. Should such circumstances require the Contractor to stop the Work for a period of **thirty (30) consecutive days**, the Owner, upon written request of the Contractor, shall negotiate a reasonable adjustment to the Contract Time. However, should such circumstances cause either the Contractor or the Owner to be unable to reasonably provide the supplies, materials, equipment, or services required, or perform the Work according to the requirements of the Agreement, the Owner may, at its sole discretion, terminate the Agreement.

For delays in performance by Contractor caused by circumstances which are within its control, and when such delays in performance meet at least one of the following conditions: 1) the total of all such delays in sum equals or exceeds the Contract Time for completion as set forth in **Attachment E**, Project Schedule or 2) such delays result in stoppage of the Work for a period of **thirty (30) consecutive days**, the Owner may, at its own discretion, provide a written notice to the Contractor of its substantial failure to perform the Work in accordance with the Agreement, and such delay shall be documented on the Contractor's Project Performance Evaluation form. Said form shall be completed at the conclusion of Project and acknowledged by both Owner and Contractor. Completed form shall be retained by Owner for a period of **seven (7) years** and reviewed prior to selection for City projects.

In the event Contractor is delayed in the performance of the Work because of delays caused by Owner, Contractor shall have no claim against Owner for damages or contract adjustment other than an extension of time.

19. HAZARDOUS MATERIALS

Hazardous materials may exist at a site where there is no reason to believe they could or should be present. The Owner and Contractor agree that the discovery of unanticipated hazardous materials constitutes a changed condition and, prior to proceeding with the Work, the Contractor shall submit to the Owner a written request for a



Standard Form of Agreement Between Owner and Contractor

Change Order to reflect the change in the scope of work created by the discovery of the hazardous materials. Owner and Contractor also agree that the discovery of unanticipated hazardous materials may make it necessary for the Contractor to take immediate measures to protect health and safety and will compensate Contractor for any equipment decontamination or other costs incident to the discovery of unanticipated hazardous materials.

Contractor agrees to notify Owner when unanticipated hazardous materials or suspected hazardous materials are encountered. Owner agrees to make any disclosures required by law to the appropriate governing agencies, and agrees to hold Contractor harmless for any and all consequences of disclosures made by Contractor which are required by governing law. In the event the project site is not owned by Owner, the Owner agrees to inform the property owner of the discovery of unanticipated hazardous materials or suspected hazardous materials.

20. COMMUNICATIONS

Any communication required by this Agreement shall be made in writing to the address specified below:

Contractor:	PlayCore Holdings, Inc., d/b/a GameTime 401 Chestnut Street, Suite 410 Chattanooga, TN 37402 Phone: (423) 648-5819
Owner:	City of Chattanooga Department of Parks and Recreation 1102 South Watkins Street Chattanooga, TN 37404 Phone: (423) 643-6086
DBRA Contract Administrator:	Doug Smith Community Development Specialist City of Chattanooga Neighborhood Services and Community Development 101 E. 11th Street, Suite 200 Chattanooga, TN 37402 Phone: (423) 757-5127

Nothing contained in the Article shall be construed to restrict the transmission of routine communications between representatives of Contractor and Owner.

Project Manager:	Glenn L Sheppard CPSI, AFO Director of Parks City of Chattanooga Department of Parks and Recreation 1102 South Watkins Street Chattanooga, TN 37404 Phone: (423) 643-6086
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The Project Manager shall provide complete administration of this Agreement and shall be the Owner's representative for the Project including the following portions of the Work:

1. Review of the Contractor's applications for payment and certifying the amount due the Contractor



Standard Form of Agreement Between Owner and Contractor

2. Review of submittals, such as shop drawings, material selections and proposed substitutions to determine conformance with the design intent and either approving, rejecting, or requesting additional information to support the submittal.
3. Provide on-site project observations during construction to guard against nonconformity of the work with the Contract Documents and to observe and report on the Contractor's compliance with the Project Schedule.
4. The Project Manager will attend all progress meetings.
5. Upon request by the Contractor, the Project Manager shall make a Substantial Completion inspection of the Work and submit to the Contractor, a written report of items necessary to complete the project in accordance with the Contract Documents. Prior to issuing a Certificate of Substantial Completion, the Project Manager shall verify that all items required by the Contract Documents are substantially complete.
6. When the Contractor has completed the Work as specified in the Contract Documents and issued to the Project Manager a Notice of Final Completion of the Work, the Project Manager shall conduct a Final Completion Inspection and verify, to the best of their knowledge, information and belief that the completion of the Work is in compliance with the Contract Documents and issue a Final Certificate for Payment.
7. During the **one (1) year** period after the date of Substantial Completion of the Work, the Project Manager shall assist the Owner in securing remedy of any of the Work that the Project Manager, the Architect or the Architect's Consultants have determined non-conforming with the Contract Documents and at the end of the one year period, the Project Manager along with the Architect and its Consultants, as required, shall perform a one year inspection of the Work and submit to the Contractor, in writing, a report of non-conforming work to be corrected by the Contractor.

The Architect shall not issue any oral or written orders for changes to the Contract Documents until approved in writing by the Owner. Furthermore, the Contractor shall have no claim against the Owner nor shall the Owner be liable for any cost, delay, or damages to the Project or any other party as a result of the Architect's oral or written orders for changes to the Contract Documents.

21. WAIVER

A waiver by either Owner or Contractor of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

22. DISPUTE RESOLUTION

Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to mediation in Chattanooga, Tennessee, in accordance with the following provisions:

- a. The mediation shall be conducted by a mediator mutually acceptable to both parties.
- b. The parties agree to share equally in the expenses of mediations.
- c. Such mediation may include the Contractor or any other person or entity who may be affected by the subject matter of the dispute.
- d. Unless the parties agree otherwise, mediation shall be a condition precedent to the exercise of any legal remedy other than a proceeding seeking an immediate injunction or restraining order to protect the rights of a party pending litigation. Notwithstanding the issuance of an injunction or restraining order or the refusal of a court to issue such an order, the dispute shall continue to be subject to mediation.

23. SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any



Standard Form of Agreement Between Owner and Contractor

other portion or provision of this Agreement Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

24. INTEGRATION

This Agreement represents the entire and integrated agreement between Owner and Contractor. All prior and contemporaneous communications, representations, and agreements by Contractor, whether oral or written, relating to the subject matter of this Agreement, as set forth in **Attachment D**, Supplemental Agreements, are hereby incorporated into and shall become a part of this Agreement

25. SUCCESSORS AND ASSIGNS

Owner and Contractor each binds itself and its directors, officers, partners, successors, executors, administrators, assigns, and legal representatives to the other party of this Agreement and to the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all provisions of this Agreement.

26. ASSIGNMENT

Neither Owner nor Contractor shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent Contractor from employing independent consultants, associates, and subcontractors to assist in the performance of the Work; however, other agreements to the contrary notwithstanding, in the event Contractor employs independent consultants, associates, and subcontractors to assist in performance of the Work, Contractor shall be solely responsible for the negligent performance of the independent consultants, associates, and subcontractors so employed.

27. THIRD PARTY RIGHTS

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than Owner and Contractor.

28. RELATIONSHIP OF PARTIES

Nothing contained herein shall be construed to hold or to make the Owner a partner, joint venturer, or associate of Contractor, nor shall either party be deemed the agent of the other, it being expressly understood and agreed that the relationship between the parties is and shall at all times remain contractual as provided by the terms and conditions of this Agreement.

29. NON-DISCLOSURE

Contractor agrees not to disclose or to permit disclosure of any information designated by the Owner as confidential, except to the Contractor's employees and subcontractors who require such information to perform the Work specified in this agreement.



30. NON-DISCRIMINATION

Contractor agrees to comply with all federal, state, and local non-discrimination laws and regulations. Contractor, in performing under this contract, shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, creed, color, age or national origin, or handicap, or sex, nor otherwise commit an unfair employment practice. Contractor further agrees that this article will be incorporated by Contractor in all contracts entered into with suppliers of materials or services, contractors and sub-contractors and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor, services, or work in connection with this contract.

31. DRUG FREE WORKFORCE

Contractor certifies that it will provide a drug-free workplace and agrees to comply with the applicable requirements of the Drug-Free Workplace Act of 1988.

32. FEDERAL OR STATE FUNDING

Contractor agrees to abide by all applicable Federal and State laws, regulations, grant conditions and procedures including the provisions of the Davis-Bacon and Related Acts (DBRA) and the Contract Work Hours and Safety Standards Act (CWHSSA).

For all contracts in excess of \$2,000 for the construction, alteration, and/or repair of public buildings or public works, including painting and decorating, all contractors and subcontractors shall pay the various classes of laborers and mechanics employed on the site of the Work the wage rates and fringe benefits determined by the current Davis-Bacon contract wage determination for Hamilton County, Tennessee, incorporated herein as **Attachment H**.

33. STORMWATER REQUIREMENT

Per the City of Chattanooga Municipal Separate Storm Sewer (MS4) National Pollutant Discharge Elimination System (NPDES) permit No. TNS068063 issued by the State of Tennessee, contractors involved in municipal maintenance activities shall comply with all federal, state and local stormwater requirements including stormwater control measures or best management practices (BMPs), facility-specific stormwater management regulations and related standard operating procedures (SOPs).

Municipal maintenance activities covered by this requirement includes but not limited to:

- i. Vehicle maintenance and washing activities
- ii. Buildings and other facilities maintenance
- iii. Right-of-Way maintenance
- iv. Activities that disturb dirt
- v. Activities that generate by-products, wastes or wastewater, etc.

Examples of BMPs include: 1) proper erosion and sediment control practices, 2) proper handling and disposal of wastewater and wasted materials, and 3) good housekeeping measures, etc. For additional guidance contact the City Water Quality Program at (423) 643-5877.

Note that failure to comply with stormwater regulations would result in enforcement actions that include court citation and/or civil penalty assessment up to \$10,000 per day per violation.



Standard Form of Agreement Between Owner and Contractor

34. CHANGES TO THE AGREEMENT

No alterations or variations in the terms of this Agreement shall be valid or binding upon the Owner, nor shall Contractor have any claim against the Owner or hold the Owner liable for any cost, delay, or damages to the Project or any other party as a result of oral or written orders for changes to the Work, Contract Documents, Project Schedule, Contract Sum or any other requirements of the Agreement unless such changes are made in writing as set forth herein.

Changes to the Work, including revisions to the Contract Documents, Project Schedule and Contract Time, and Contract Sum shall be made by written Change Order issued by the Owner or their designated representative for Construction Administration and shall be signed by the City Attorney. Change Orders shall: 1) clearly demonstrate the changes to the Work, 2) the amount of adjustment to the Project Schedule and Contract Time, if any, and 3) the amount of adjustment to the Contract Sum, if any.

Changes, alterations or variations in the terms of this Agreement other than changes to the Work shall be made by Supplemental Agreement and shall be attached as set forth in **Attachment D**, Supplemental Agreements, and shall be made in writing and signed by the City Attorney.

35. TESTING AND INSPECTIONS

The Contractor shall, unless otherwise specified, make all inspections, tests, certifications, and approvals of the portions of the Work as specified in the Contract Documents and as required by applicable laws, statutes, ordinances, codes, and regulations. Tests, inspections, certifications, and approvals shall be performed by an independent testing laboratory or firm acceptable to and approved by the Owner. The cost of such inspections, tests, certifications, and approvals shall be paid by the Contractor.

36. DELIVERIES

Contracts for the delivery of materials or supplies will remain in force for the entire Contract Time and until all equipment and materials ordered within the Contract Time have been satisfactorily delivered and accepted and thereafter until all requirements and conditions of the Agreement have been met. Nothing specified herein shall limit the Owner's right to terminate the Agreement prior to the completion of the Contract Time as allowed herein.

The Contractor shall be responsible for the materials, supplies and equipment covered by the Agreement until they are delivered and accepted at the destination point, and the Contractor shall bear all risk on rejected material or supplies after notice of rejection. Rejected materials, supplies and equipment shall be promptly removed by the Contractor upon notification of rejection. In the event that public health and safety require immediate destruction or disposal of a rejected delivery, the Owner may, at their discretion and upon notification of the Contractor, arrange for such destruction or disposal and invoice the cost of such to the Contractor.

Inspection and acceptance of materials, supplies and equipment will be made after delivery. Final inspection shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud. Final inspection and acceptance or rejection of the materials, supplies and equipment will be made by the Owner in a timely manner, however, the Owner's failure to inspect and accept or reject materials, supplies and equipment, as set forth herein, shall not impose liability on the Owner for such materials, supplies and equipment that are determined non-conforming to the Specifications. All deliveries shall be accepted subject to inspection and physical count.



Standard Form of Agreement Between Owner and Contractor

All Shipments or Deliveries shall be accompanied by Packing Slips or Delivery Tickets, and shall contain the following information for each item delivered:

- i. The Purchase Order Number
- ii. The Name of the Article and Stock Number (Supplier's)
- iii. The Quantity Ordered
- iv. The Quantity Shipped
- v. The Quantity Back Ordered
- vi. The Name of the Contractor

Deliveries will be accepted between 8:30a.m. and 4:00p.m. on weekdays only. No deliveries will be accepted on Saturdays, Sundays or Holidays.

Failure to comply with these conditions SHALL BE CONSIDERED SUFFICIENT REASON FOR REFUSAL TO ACCEPT THE GOODS.

37. OPEN RECORDS

- a. Pursuant to provisions in the Tennessee Open Records Act, and the policies adopted by the Office of Open Records Counsel (OORC), municipal record custodians are required to provide some response to public records requests no later than **seven (7) business days** after receipt of a records request. Pursuant to the Tennessee Open Records Act, the municipal record custodian must respond within **seven (7) days** and either:
 - i. provide the requested records for review, or
 - ii. provide a written explanation of why the records will not be made available and /or
 - iii. provide communication that record production will take longer than **seven (7) days** to compile/research the data. In this event the municipal record custodian will provide an estimated length of time necessary before production or requested records will occur.
- b. There is no charge to view documents which are determined to be public records. However, as provided by the written policies adopted by the OORC, applicable charges for expenses incurred by the municipality to respond to a public records request may include:
 - i. The cost of employee(s) time in excess of one hour to compile/research/redact the documents requested and
 - ii. If copies of the documents are requested, the copying cost is \$.15 for b/w and \$.50 for color on 8 1/2" X 11" pages.
- c. The Schedule of Fees and the Policy on Frequent and Multiple requests of copies of public records as established by the OORC are attached. Pursuant to the policies adopted by the OORC, municipalities are permitted to charge for any labor in excess of one hour that is required to compile documents for citizens' review. In the event that more than four (4) requests are made by any citizen per calendar month, records custodians are also permitted to stop providing a free hour of labor beginning with the fifth (5th) request for records. See the policy on Frequent and Multiple Requests for Copies of Public Records adopted by the OORC on January 9, 2009. If a records custodian reasonably believes a group of individuals are acting in concert and chooses to group together their requests for copies for purposes of charging for labor, the records custodian must file a Notice of Aggregation with the OORC.

38. WARRANTY

Unless otherwise specified, the Contractor shall unconditionally guarantee the Work on the Project, including materials and workmanship on all equipment provided, for a period of **one (1) year** from date of Final Completion and acceptance of the Work, or the guarantee period, whichever is longer. If, within this period, any defects or signs of deterioration are noted, which, in the opinion of the Owner are due to faulty design, installation, workmanship or



Standard Form of Agreement Between Owner and Contractor

materials, upon notification, the Contractor at his own expense, shall repair, replace, or adjust the Work, equipment or parts thereof, to correct the condition to the complete satisfaction of the Owner. These repairs, replacements or adjustments shall be made only at such time as will be designated by the Owner at least detrimental to the daily operations of the Owner, normal City business, tenant(s), or other parties as may be reasonably affected by such work.

IN WITNESS WHEREOF, Owner and Contractor have executed this Agreement.

Contractor Date

Administrator, Parks and Recreation Date

Contractor Date

Director of Purchasing Date

Reviewed by City Attorney's Office

Initial

Date

**ATTACHMENT A**

Owner: City of Chattanooga, Tennessee

Contractor: PlayCore Holdings, Inc., d/b/a GameTime

Project Name: Alton Park Recreation Center Playground

SCOPE OF WORK

The scope of work for the Project will include, but not be limited to the following items:

1. The Contractor shall provide all labor, equipment, and services to properly execute the work indicated in the Contract Documents.
2. Grading and installation of base and drainage system for pour-in-place composite play surface to provide positive drainage of play area.
3. Installation of concrete walk, play area border curbing, and pour-in-place composite play surface.
4. Provide and install composite modular play structure, free-standing play equipment, and accessories.
5. The Contractor shall visit the site prior to beginning the Work and inspect the existing site conditions including building structures, pavings, utilities, fencing and vegetation to verify that all items indicated to be existing and so marked on drawings are in place and correct.
6. Contractor shall provide, monitor, and maintain all necessary safety measures during its execution of the Work for the protection of the public.
7. Contractor shall prevent debris, dirt, and dust created by, or as a result of its operations to spread to adjacent structures, properties, and right of ways and the work area shall be kept as clean as possible at all times.
8. Thoroughly clean work area and provide touch-ups, as required, to all products and materials installed, and to adjacent areas affected by the installation of such.
9. All products, materials, equipment, labor, submittals, and guaranties shall be as set forth in the drawings and specifications incorporated into the Contract Documents.

CONTRACT DOCUMENTS

Drawings:

Construction Documentation - Alton Park Recreation Center Playground, prepared by Method Architecture LLC, 1200 E. Main Street, Suite 100, Chattanooga, TN 37408, drawings include:

A101 – Floor Plans

Dated 12-13-12

Specifications:

Specification Sections for Alton Park Recreation Center, prepared by Method Architecture LLC, 1200 E. Main Street, Suite 100, Chattanooga, TN 37408, specifications include:

Section 02300 – EARTHWORK

Section 02790 – POURED RUBBER SAFETY SURFACE

Section 03100 - CONCRETE FORMS AND ACCESSORIES

Section 03300 - CAST-IN-PLACE CONCRETE

Section 116800 - PLAYGROUND SYSTEM



**Standard Form of Agreement
Between
Owner and Contractor**

ATTACHMENT B

Owner: City of Chattanooga, Tennessee
Contractor: PlayCore Holdings, Inc., d/b/a GameTime
Project Name: Alton Park Recreation Center Playground

COMPENSATION

For the Work covered by this Agreement, the Owner agrees to pay the Contractor as follows:

For the Scope of Work described in **Attachment A**, a Contract Sum of **One Hundred Thirty Five Thousand Eight Hundred Seventy Five and NO/100 dollars (\$135,875.00)** including any adjustments to the Contract Sum provided by written changes or supplements to this Agreement.



**Standard Form of Agreement
Between
Owner and Contractor**

ATTACHMENT C

Owner: City of Chattanooga, Tennessee
Contractor: PlayCore Holdings, Inc., d/b/a GameTime
Project Name: Alton Park Recreation Center Playground

OWNER'S RESPONSIBILITIES

The Owner will provide the following as part of the Project:

1. The Owner will provide a designated Owner's representative for the purpose of communication between the Owner and Contractor for the Project.
2. The Owner will provide Contractor with access to all related plans and specifications for the Project.
3. The Owner will provide the Contractor with access to the Project during normal City business hours for the purpose of performing the Work under this Agreement.



**Standard Form of Agreement
Between
Owner and Contractor**

ATTACHMENT D

Owner: City of Chattanooga, Tennessee
Contractor: PlayCore Holdings, Inc., d/b/a GameTime
Project Name: Alton Park Recreation Center Playground

SUPPLEMENTAL AGREEMENTS

Owner and Contractor agree that the following communications, representations, and agreements by Contractor relating to the subject matter of the Agreement are hereby incorporated into and shall become a part of the Agreement.

NONE



**Standard Form of Agreement
Between
Owner and Contractor**

ATTACHMENT E

Owner: City of Chattanooga, Tennessee

Contractor: PlayCore Holdings, Inc., d/b/a GameTime

Project Name: Alton Park Recreation Center Playground

PROJECT SCHEDULE

Owner and Contractor recognize that time is of the essence of the Agreement and that Owner will suffer financial loss if the Work is not completed within the times stipulated herein, plus any extensions thereof. If Project is behind schedule, the reason shall be recorded.

Schedule:

1. It is understood and agreed that the Contractor shall start the performance of the Work within **ten (10) days** of receipt of a written Notice to Proceed and shall complete the Work within the Contract Time of **sixty (60) calendar days**.
2. In the event the Contractor is unable to complete the Work within the Contract Time stipulated herein, plus and extensions thereof, Owner shall be compensated for liquidated damages of **fifty dollars (\$50.00)** for each additional day required for the completion of the Work.



**Standard Form of Agreement
Between
Owner and Contractor**

ATTACHMENT F

Owner: City of Chattanooga, Tennessee
Contractor: PlayCore Holdings, Inc., d/b/a GameTime
Project Name: Alton Park Recreation Center Playground

RATE SCHEDULE

Unit Prices:

- Unit Item #1: Cut/Fill - unit price per cubic yard (CY) of cut and fill as may be required for additional work outside of base bid plans. **\$40.00 per CY**
- Unit Item #2: Above Grade demolition - unit price per cubic yard (CY) to demo and remove concrete, masonry or other structure above grade. This unit price is for any work outside of base bid of project. **\$75.00 per CY**
- Unit Item #3: Below Grade demolition - unit price per cubic yard (CY) to demo and remove concrete, masonry or other structure below grade and replace with compacted fill to level grade. This unit price is for any work outside of base bid of project. **\$75.00 per CY**



Standard Form of Agreement Between Owner and Contractor

ATTACHMENT G (Cont.)

Date _____

I, _____ (Name of Signatory Party) _____ (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

_____ on the
(Contractor or Subcontractor)

_____ ; that during the payroll period commencing on the
(Building or Work)

_____ day of _____, and ending the _____ day of _____,

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

_____ from the full
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3146), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

- in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

- Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

**ATTACHMENT H****DAVIS-BACON ACT CONTRACT WAGE DETERMINATION**

General Decision Number: TN120146 06/08/2012 TN146

Superseded General Decision Number: TN20100161

State: Tennessee

Construction Type: Heavy Including Water and Sewer Line Construction

Counties: Hamilton and Sequatchie Counties in Tennessee.

HEAVY CONSTRUCTION PROJECTS (including sewer/water construction).		
Modification Number	Publication Date	
0	01/06/2012	
1	02/03/2012	
2	06/01/2012	
3	06/08/2012	
ELEC0175-012 07/01/2011 - Hamilton County		
	Rates	Fringes
Electrician	\$28.08	11.6%+6.35
ELEC0429-008 06/01/2012 - Sequatchie County		
	Rates	Fringes
Electrician	\$23.35	10.72
* ENGI0917-022 05/01/2012		
	Rates	Fringes
OPERATING ENGINEERS:		
Bulldozer and Crane	\$24.94	9.40
Forklift	\$22.89	9.40
LABO0846-001 05/01/2011		
	Rates	Fringes
LABORER:		
Common or General	\$13.50	4.75
SUTN2009-144 12/02/2009		
	Rates	Fringes
LABORER:		
Flagger	\$8.73	0.00
Pipelayer	\$11.68	0.00
OPERATOR:		
Backhoe/Excavator/Trackhoe	\$16.82	0.00
Loader	\$13.50	0.00
TRUCK DRIVER:		
Dump Truck	\$10.76	0.00
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.		