

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**ADDENDUM TO FUN ABOUNDS, INC.'S AGREEMENT
(Buy Board Purchasing Cooperative #592-19)**

THIS ADDENDUM is entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Fun Abounds, Inc., (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

RECITALS

WHEREAS, the parties have executed and accepted Fun Abounds, Inc.'s Estimate #8050, (hereinafter the "Agreement"), attached hereto as Exhibit "A", subject to the changes herein, and in accordance with the Buy Board Purchasing Cooperative No. 592-19, incorporated by reference as if set forth verbatim herein; and

WHEREAS, County desires that Contractor provide removal and replacement of playground equipment services at Mustang Park as will be more specifically described in this Agreement (hereinafter "Services");

WHEREAS, Contractor represents that it is qualified and desires to perform such services;

WHEREAS, the following changes are incorporated as if a part of the Agreement;

WHEREAS, the purpose of this Addendum is to modify, delete, or amend certain terms and conditions set forth in Exhibit A; and

WHEREAS, the following changes are incorporated as if a part of the Agreement:

AGREEMENT

1. **Scope of Services.** Subject to this Addendum, Contractor will render Services to County as described in Exhibit A.
2. **Payment; Non-appropriation; Taxes.** Payment shall be made by County within thirty (30) days of receipt of invoice. It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all

necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County. County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request. Interest resulting from late payments by County shall be governed by Chapter 2251, TEXAS GOVERNMENT CODE.

3. **Limit of Appropriation.** Contractor clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of Eighty-Nine Thousand, Four Hundred Fifty-One and 00/100 dollars (\$89,451.00), specifically allocated to fully discharge any and all liabilities County may incur. Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to and the total maximum sum that County may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed Eighty-Nine Thousand, Four Hundred Fifty-One and 00/100 dollars (\$89,451.00). In no event will the amount paid by the County for all services under this Agreement exceed this Limit of Appropriation without an amendment executed by the parties.
4. **Public Information Act.** Contractor expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Contractor shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed.
5. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless Contractor for any reason are hereby deleted.

6. **Applicable Law; Arbitration; Attorney Fees.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity. County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted. County does not agree to pay any and/or all attorney fees incurred by Contractor in any way associated with the Agreement.

7. **Certain State Law Requirements for Contracts.** The contents of this Section are required by Texas Law and are included by County regardless of content.
 - A. Agreement to Not Boycott Israel Chapter 2271 Texas Government Code: By signature below, Contractor verifies that if Contractor employs ten (10) or more full-time employees and this Agreement has a value of \$100,000 or more, Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement."

 - B. Texas Government Code Section 2251.152 Acknowledgment: By signature below, Contractor represents pursuant to Section 2252.152 of the Texas Government Code, that Contractor is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

8. **Human Trafficking.** BY ACCEPTANCE OF CONTRACT, CONTRACTOR ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

9. **Insurance.** Prior to commencement of the Services under this Agreement, Contractor shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. Contractor shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Contractor shall obtain such insurance written on an Occurrence form from

such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

- (a). Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
- (b). Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
- (c). Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.
- (d). Professional Liability insurance with limits not less than \$1,000,000. County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies including Workers' Compensation written on behalf of Contractor shall contain a waiver of subrogation in favor of County and members of Commissioners Court. For Commercial General Liability, the County shall be named as an Additional Insured on a Primary & Non-Contributory basis.

If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of two years beginning from the time that work under the Agreement is completed.

Contractor's or Contractor's subcontractor's insurance will be primary to any insurance carried or self-insurance program established by the County. Contractor's or Contractor's subcontractor's insurance will be kept in force until all service have been fully performed and accepted by County in writing. Approval of the insurance by Fort Bend County shall not relieve or decrease the liability of the Contractor.

10. **Modifications and Waivers.** The parties may not amend or waive this Agreement, except by a written agreement executed by both parties. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under

this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute. No other provisions to this Agreement apply except for the terms which appear and/or are referenced in this Addendum and Exhibit A.

11. **Use of Customer Name.** Contractor may use County's name without County's prior written consent only in any of Contractor's customer lists, any other use must be approved in advance by County.
12. **Performance Warranty.** Contractor warrants to County that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Contractor will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.

Contractor warrants to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A.
13. **Conflict.** In the event there is a conflict between this Addendum and Exhibit A, this Addendum controls.
14. **Understanding, Fair Construction.** By execution of this Addendum, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Addendum. This Addendum, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.
15. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.
16. **Electronic and Digital Signatures.** The parties to this Agreement agree that any electronic and/or digital signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.
17. **Successors and Assigns.** County and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.
18. **Ownership and Reuse of Documents.** All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of County upon completion of this

Agreement, or in the event of termination or cancellation thereof, at the time of payment under § 2 for work performed. Contractor shall promptly furnish all such data and material to County on request.

19. **Personnel.** Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, to perform the Services when and as required and without delays.

All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor or agent of Contractor who, in the opinion of County, is incompetent or by his conduct becomes detrimental to providing Services pursuant to this Agreement shall, upon request of County, immediately be removed from association with the Services required under this Agreement.

When performing Services on-site at the County, Contractor shall comply with, and ensure that all Contractor Personnel comply with, all rules, regulations and policies of County that are communicated to Contractor in writing, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by County to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures.

20. **Compliance with Laws.** Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

21. **Confidential Information.** Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Contractor or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this

Agreement; or (c) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise County immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Contractor will promptly turn over to County all documents, papers, and other matter in Contractor's possession which embody Confidential Information.

Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

21. **Independent Contractor.** In the performance of work or services hereunder, Contractor shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Contractor or, where permitted, of its subcontractors. Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

22. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.
22. **Entire Agreement.** This executed instrument is understood and intended to be the final expression of the parties' agreement and is a complete and exclusive statement of the terms and conditions with respect thereto, superseding all prior agreements or representations, oral or written, and all other communication between the parties relating to the subject matter of this agreement. Any oral representations or modifications concerning this instrument shall be of no force or effect excepting a subsequent modification in writing signed by all the parties hereto.

{Execution Page Follows}

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FORT BEND COUNTY

FUN ABOUNDS, INC.

KP George, County Judge

Payton Palmer-Newton

Authorized Agent - Signature

Date

Payton Palmer-Newton

Authorized Agent - Printed Name

Business Development Manager

Title

5/2/22

Date

ATTEST:

Laura Richard, County Clerk

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$_____ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

i:\agreements\2022 agreements\parks\fun abounds, inc. (22-parks-100862)\addendum to fun abounds, inc's agreement (kcj -04.12.2022)

EXHIBIT A



"creating playground memories filled with fun"

fun abounds, inc.
 114 Venice
 Sugar Land, TX. 77478
 855-226-8637 phone
 281-265-0043 Fax
 Leigh Walden, President
 lwalden@fabplaygrounds.com
 www.fabplaygrounds.com

Estimate	
Date	Estimate #
4/6/2022	8050

Payton Palmer-Newton,
 Playground Specialist
 Coastal Bend
 payton@fabplaygrounds.com
 361-230-3006

We are pleased to provide this estimate for
 Fort Bend County Parks and Recreation
 Darren McCarthy

Ship to:		
Rep	Terms	Project
PPN	30% deposit requ...	Mustang Park

Item	Description	Qty	Rate	Total
Buyboard Number	Buyboard 592-19		0.00	0.00
Removal	Demo Phase Removal of Current Equipment & Borders Subtotal of Demo Phase		3,500.00	3,500.00T 3,500.00
Burke	Playground Equipment Phase BCI Burke Nucleus NU-2910		55,013.00	55,013.00T
Burke	Single Post Swing - (2) Belt Seats		1,658.00	1,658.00T
Freight	Freight (firm quote TBD at time of order)		5,000.00	5,000.00T
Installation	Installation of Playground Equipment Subtotal of Playground Equipment Phase		16,500.00	16,500.00 78,171.00
APS ADA HALFRAMP	Surfacing Phase - Approx. 1,500sqft / 200Lft ADA Half Ramp (for use with 8" or 12" timbers)	1	500.00	500.00T
APS-Border12"	12" APS Playground Border with Surfacing Guide and 1 spike	50	35.00	1,750.00T
Rubber Mulch/Brown	Generic 76.9 Cu Ft - Super Sack	11	485.00	5,335.00T

Thank you for allowing us to submit this proposal.

Subtotal

PLEASE NOTE: Order will be placed upon receipt of signed quote or purchase order, color selections, and down payment.

Sales Tax..

Thank you! We appreciate the opportunity to earn your business!

Total

City of Houston WBE
 (Women's Business Enterprise)
 Certificate #20-2-11596

Signature

We are proud of a job well done and may spotlight your project on our social media. If we do not have your permission to do so, please notify us. Thank you!



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Rep	Terms	Project
PPN	30% deposit requ...	Mustang Park

Item	Description	Qty	Rate	Total
Rubber Mulch - Installed	Rubber Mulch Installation	11	245.00	2,695.00T
Freight	Freight for Rubber Mulch (firm quote TBD at time of order)		1,500.00	1,500.00T
	Subtotal of Features			11,780.00
Discount	Buyboard Discount		-4,000.00	-4,000.00
Note	Pricing is for the above listed equipment only, and does not include additional insured addendum, additional insurance, storage, security, or any applicable taxes, bonds, additional insurance or permits. Orders canceled after an order has been received, a minimum of 5% restocking to full replacement pricing of item will be required. Price valid for 30 days.		0.00	0.00T

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Subtotal

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PPN	30% deposit requ...	Mustang Park

Item	Description	Qty	Rate	Total
Force Majeure	No Party to this Agreement shall be responsible for any delays or failure to perform any obligation under this Agreement due to acts of God, outbreaks, epidemic/pandemic or the spreading of disease, contagion, strikes, or other disturbances, including, without limitation, war, insurrection, embargoes, governmental restrictions, acts of governments or governmental authorities, and any other cause beyond the control of such party. During an event of force majeure, the Parties' duty to perform obligations shall be re-assessed.		0.00	0.00
Nondisclosed underground	We make every effort to ensure that we are working in areas free of utilities. In the event an object is disturbed or damaged and the client has failed to make us aware of their utilities it will be the Client's responsibility.		0.00	0.00T

Thank you for allowing us to submit this proposal.

	Subtotal
--	-----------------

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Sales Tax..
Total

City of Houston WBE
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Ship to:		
Rep	Terms	Project
PPN	30% deposit requ...	Mustang Park

Item	Description	Qty	Rate	Total
Water Clause	In the event, we run into excessive water, we will partner with you as to best handle the situation, There may be an additional charge.		0.00	0.00T
Schedule	There are times due to weather or unforeseen circumstances that we might have to reschedule. In an effort to provide excellent customer service we will notify you should rescheduling be necessary. We appreciate your understanding as we pride ourselves on providing attention and detail to every project.		0.00	0.00T
Finance Charge	Accounts not paid within 30 days of the date of the invoice are subject to a 1.5% finance charge.		0.00	0.00T
Credit Cards	Payments made with credit cards will require an additional 3.10% service fee.		0.00	0.00T

Thank you for allowing us to submit this proposal.

	Subtotal
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Sales Tax..
Total

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Rep	Terms	Project
PPN	30% deposit requ...	Mustang Park

Item	Description	Qty	Rate	Total
HUB Certificate	Certificate/VID Number: 1364766562200 File/Vendor Number: 496631 Approval Date: 25-MAR-2020 Scheduled Expiration Date: 25-MAR-2024		0.00	0.00T

Thank you for allowing us to submit this proposal.	Subtotal \$89,451.00
PLEASE NOTE: Order will be placed upon receipt of signed quote or purchase order, color selections, and down payment. Thank you! We appreciate the opportunity to earn your business!	Sales Tax.. \$0.00
	Total \$89,451.00

City of Houston WBE
 (Women's Business Enterprise)
 Certificate #20-2-11596

Signature _____

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