

AGREEMENT FOR REPLACING THE TOOHEY PARK PRESCHOOL SAFETY CITY ROOFS

This Agreement is for replacing the Wheaton Park District Toohey Park Preschool Safety City roofs (the "Agreement"), made this 10th day of May 2023 by and between the Wheaton Park District, an Illinois park district (the "Park District") with its principal place of business at 102 E. Wesley Street, Wheaton, Illinois, and Wheaton Roofing Inc., an Illinois company (the "Contractor"), with its principal place of business at 141 W. Grand Lake Blvd., West Chicago, IL 60185 collectively referred to as the "Parties" or individually as "Party."

WITNESSETH

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

1. Labor and Materials

The Contractor shall provide all labor and materials required to complete the following work at the Toohey Park Preschool Safety City, 1900 Orchard Rd., Wheaton, IL 60189):

- Remove existing shingles down to wood substrate.
- Replace any rotten substrate, if necessary. Owner to approve any amount prior to replacement.
- Install 30 lb. roofing felt over entire substrate.
- Install lifetime AR shingles – IKO Cambridge, GAF Timberline HD or equal to or better.
- Owner to approve shingle and color.
- Install drip edge on entire perimeter.
- Remove and re-install lightning protection system, if applicable.
- *There are NO gutters.*
- Haul away all debris and magnetically sweep work area for nails.

Contractor is responsible for taking their own measurements onsite.

The "Work" is as indicated in Contractor's Quote dated, April 21 2023, attached to and incorporated as part of this Agreement as **Exhibit A** (the "Contractor's Proposal").

2. Term

The term of this Agreement shall be to commence the week of May 10, 2023 and expire on May 17, 2023 (the "Term") unless terminated earlier pursuant to the terms of this Agreement.

3. Performance of Work

Contractor agrees to perform in a good and workmanlike manner and to the best of Contractor's ability, experience, and talents, in accordance with generally-accepted practices in the Greater Chicago area, all of the duties that are described in Contractor's Proposal or as otherwise required by the express and implicit terms of this Agreement, to the satisfaction of the Park District. Contractor's duties may be specified and modified from time to time by the Park District in writing.

The Park District reserves the right to evaluate Contractor's performance of the Work, its employees and agents and, in the event such Work or performance are not in conformity with the requirements of this Agreement, as determined by the Park District, the Park District shall have the option to terminate this Agreement in accordance with Section 8 of this Agreement. Should the Park District reasonably determine that the performance of an employee or contractor of Contractor is inadequate or that said employee's or contractor's continued presence is in any way inconsistent with the policies and practices of the Park District, Contractor shall remove or reassign said employee or contractor immediately upon receipt of notice from the Park District.

Contractor shall not interfere in any way with and shall cooperate fully with other contractors used by Park District for any other work at the Project sites.

4. Contract Sum

The Park District agrees to pay Contractor for the proper and timely performance of the Work in strict accordance with the Agreement for the Term of this Agreement as follows: **\$5,800** as per the contractor's included quote as **Exhibit A**.

5. Payment

Payment shall be made by the Park District to the Contractor upon the Park District's receipt of an invoice itemizing the Work properly performed, as determined by the Park District, for the period covered by the invoice. Payments of all invoices, and any late payment penalties, shall be governed by the Local Government Prompt Payment Act (5 ILCS 505/1 *et seq.*).

6. Cleaning Up

The Contractor shall keep the project site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement.

7. Safety of Persons and Property

- A. The Contractor shall take reasonable precautions for the health and safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
 - 1. employees engaged in the Work and other persons who may be affected thereby; and
 - 2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors.
- B. The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- C. The Contractor shall promptly remedy damage and loss to Park District property caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except damage or loss attributable to acts or omissions of the Park District or anyone directly or indirectly employed by Park District, or by anyone for whose acts Park District may be liable, and not attributable to the fault or negligence of the Contractor.

8. Termination

- a. The Park District may, at any time, terminate the Agreement in whole or in part for the Park District's convenience and without cause. Termination by the Park District under this section shall be by a notice of termination delivered to the Contractor specifying the extent of the termination and the effective date. Upon receipt of a notice of termination, the Contractor shall immediately, in accordance with instructions from the Park District: (1) cease operation as specified in the notice; (2) place no further orders; (3) enter into no further subcontracts for materials, labors, services or facilities except as necessary to complete continued portions of the Work; (4) terminate all subcontracts and orders to the extent they relate to the Work terminated; (5) proceed to complete the performance of Work not terminated; and, (6) take actions that may be necessary or that the Park District may direct, for the protection and preservation of the terminated Work. The Contractor shall recover payment for approved and properly performed Work completed prior to the effective date of termination and for proven, out-of-pocket costs with respect to materials and equipment ordered but not used by Contractor for the Work prior to receipt of the notice of termination. Contractor shall not be entitled to damages or lost profits resulting from termination for convenience under this Section.
- b. Park District may terminate the Agreement, in whole or in part, for cause as follows:

(i) In the event Contractor breaches any of the provisions of this Agreement, Park District may terminate the Agreement immediately upon written notice to Contractor, if Contractor shall not have cured such breach within forty eight (48) business hours after Park District shall have first notified Contractor of such breach in writing or, if by its nature the breach is not capable of being cured within said forty-eight (48) business hours, Contractor shall not have commenced such cure within said forty-eight (48) business hours and diligently pursued the same to completion; provided, however, that if Contractor shall have repeatedly breached the same or other provisions previously, Park District may terminate the Agreement immediately without affording Contractor an opportunity to cure the breach, upon written notice to Contractor. Failure of Contractor to maintain required insurance coverage shall be cause for immediate termination of the Agreement, or the immediate suspension of the Agreement until such insurance has been obtained and satisfactory proof thereof provided to Park District.

In the event the Park District terminates this Contract in accordance with this Section 8(b)(i), the Park District may enter into an agreement with another Contractor or Contractors to provide the Work. In such event, Contractor shall be liable to the Park District and shall pay the Park District promptly upon demand the increased cost to the Park District of obtaining the Work from the substitute Contractor(s), including, without limitation, the cost of labor and materials associated with the preparation of bid documents, advertising and attorney's fees plus.

(ii) In the event Contractor shall have: (a) filed a voluntary petition in bankruptcy or made an assignment for the benefit of creditors; or (b) consented to the appointment of a receiver or trustee for all or a part of its property; or (c) an involuntary petition in bankruptcy shall have been filed in regard to Contractor and the same shall not have been dismissed within thirty (30) days of such filing, then the Park District may, without prejudice to any other right or remedy, immediately terminate the retention of Contractor and/or finish or cause to be finished the Contractor's Work required under this Contract by whatever method and by whichever persons the Park District deems expedient. In such case, Contractor shall not be entitled to receive any payment until the Work is completed. If the unpaid balance of the Contract Sum exceeds (1) the expenses of completing the Work, including compensation for additional managerial and administrative services, plus (2) the Park District's losses and damages because of Contractor's default, such excess shall be paid to Contractor. If such expense plus the Park District's losses and damages shall exceed such unpaid balance, Contractor shall pay the difference to the Park District promptly on demand and the Park District may resort to any other rights or remedies the Park District may have by law or under this Contract.

Upon termination of this Agreement for any reason, the rights and obligations of the Parties shall cease automatically except for the rights and obligations of the Parties accruing but unsatisfied prior to termination, including but not limited to the Park District's right to collect sums due from Contractor under this Agreement and remedies for breach of this Agreement and Contractor's obligations to make such payments and compensate Park District for such breach.

9. Insurance

Contractor will procure and maintain during the Term the insurance coverages provided in **Exhibit B**, attached to and incorporated by this reference in this Agreement, or such other insurance coverages as shall be required by the Park District's insurer or the risk management agency of which the Park District is a member.

10. Indemnification

Contractor shall indemnify and hold harmless the Park District and its officers, officials, employees, volunteers and agents in accordance with **Exhibit B**.

11. No Liability

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

12. Compliance with Laws and Permits

Contractor shall comply with all applicable local, state and federal codes, laws, ordinances, rules and regulations. Contractor shall be licensed and bonded to perform the Work hereunder and shall, at its sole cost and obligation, be responsible for obtaining all permits required to perform its duties under this Agreement. Any breach by Contractor of the foregoing laws, regulations and rules shall constitute a breach by Contractor of this Agreement. Contractor's Compliance and Certification Attachment is attached to and incorporated as **Exhibit C** to this Agreement.

13. Choice of Law and Venue

This Agreement is governed by the laws of the State of Illinois. Any suit or action arising under this Agreement shall be commenced in the Circuit Court of DuPage County, Illinois, but only after exhausting all possible administrative remedies. In any suit or action arising under this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs of litigation. Contractor, its successors or assigns shall maintain no suit or action against the Park District on any claim based upon or arising out of this Agreement or out of anything done in connection with this Agreement unless such action shall be commenced within one year of the termination of this Agreement. Contractor acknowledges that each provision of this

Agreement is important and material to the business and success of the Park District and agrees that any breach of any provision of this Agreement is a material breach of the Agreement and may be cause for immediate termination of this Agreement. In the event of a breach, Contractor shall also pay to the Park District all damages (including, but not limited to, compensatory, incidental, consequential, and punitive), which arise from the breach, together with interest, costs, and the Park District's reasonable attorneys' fees.

14. No Third-Party Beneficiary

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

15. No Waiver

Waiver of any of the terms of this Agreement shall not be valid unless it is in writing and signed by all Parties. The failure of claimant to enforce the provisions of this Agreement or require performance by opponent of any of the provisions, shall not be construed as a waiver of such provisions or affect the right of claimant to thereafter enforce the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of the Agreement.

16. Independent Contractor

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

17. Non-Assignment

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

18. Notices

All notices required or permitted to be given under this Agreement shall be deemed given when such notice is hand delivered; or when such notice is sent by facsimile transmission provided such transmission together with fax machine generated confirmation of such transmission is also sent on the transmission date to the other Party by United States mail, with postage therewith

prepaid; or when such notice is deposited in the United States mail, with postage thereon prepaid, addressed to the other party at the following addresses:

If to Park District: Wheaton Park District
 102 E. Wesley Street
 Wheaton, IL 60187
 (Fax) 630-665-5880
 Attention: Executive Director

If to Licensee: Wheaton Roofing, Inc.
 141 W. Grand Lake Blvd.
 West Chicago, IL 60185
 (Ph) 630-501-8792
 Attention: Andy Hinton

19. Entire Agreement; No Amendment

This Agreement contains the entire agreement between the Parties, and no statement, promise or inducement made by either Party to the agency of either Party that is not contained in this written Agreement shall be valid or binding. No modification of this Agreement shall be effective unless in writing dated a date subsequent to the date of this Agreement and signed by an authorized representative of each Party.

20. Headings

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

21. Severability

The invalidity of any section, paragraph or subparagraph of this Agreement shall not impair the validity of any other section, paragraph or subparagraph. If any provision of this Agreement is determined to be unenforceable, such provision shall be deemed severable and the Agreement may be enforced with such provision severed or as modified by such court.

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

WHEATON PARK DISTRICT

By: _____

Attest: _____

By: _____

CONTRACTOR

By: _____

Attest: _____

By: _____