



AGREEMENT FOR POWDER SPRINGS PARK FURNITURE

This Agreement is made and entered into this 8th day of February, 2023, by and between the **City of Powder Springs, Georgia**, a municipal corporation ("City"), and S.H. Creel Contracting LLC. ("Contractor"). The City of Powder Springs and S.H. Creel Contracting LLC may hereafter be referred to as "**Party**" individually or collectively as the "**Parties**."

W I T N E S S E T H:

WHEREAS, the City desires to retain a qualified, experienced, and licensed Contractor with demonstrated skills and experience in providing certain services, the exact nature, scope, and price of which is more completely and fully set forth in bid for services, which is attached hereto as Exhibit A and expressly incorporated herein by way of reference as a part hereof (hereinafter, "the attached quoted services");

WHEREAS, Contractor is knowledgeable and experienced in the attached quoted services, which is attached hereto as Exhibit A, required by the City and desires to provide, furnish, and deliver all necessary materials and to perform the work necessary to complete attached quoted services;

WHEREAS, the Parties desire to contract for the provision of attached quoted services according to the terms and conditions and provisions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

- Contract Time. Contractor shall complete and/or perform attached quoted services within timeframe agreed upon by the City. All Work shall begin after notification by the City and shall be carried through to completion without unreasonable delay and suspension. The contract period shall expire August 31, 2023. If there are unreasonable delays or unauthorized suspensions of work, the City reserves the right to charge the Contractor, not as a penalty, but as liquidated damages, the cost incurred by the City to complete the Work.
- Contract Price. Contractor shall complete the Work for the agreed upon sum dictated by the attachment titled Exhibit A.
- Required Documentation. Contractor shall furnish to the City certificates of insurance and any other documents, affidavits, or items required to be submitted by the terms of this Agreement and/or the State law of Georgia for review and approval by the City (i) prior to the commencement of the Work or (ii) upon Contractor execution of the Agreement. (Security and Immigration Affidavit, W-9, etc.)
- Insurance. Required insurances (Liability, Worker's Comp, etc.) shall be maintained in full force and effect during the life of the Agreement and through final completion. Subcontractors shall be required to obtain all insurance which Contractor is required to obtain. Contractor shall agree to waive all rights of subrogation against the City, the City council, the mayor, its officers, officials, employees, and volunteers from losses resulting from services performed by Contractor.
- Services Performed. Contractor will perform, supervise, and direct the attached quoted services efficiently and with its best skill and attention. Contractor will be solely responsible for the means, methods, techniques, sequences, and procedures. Contractor will provide competent, suitably qualified personnel to perform the Work. Contractor and its employees, agents, and Subcontractors shall be fully equipped, staffed, certified, authorized, and licensed for the attached quoted services. In the event Contractor causes damages, Contractor shall repair such damage at its sole expense. Contractor shall use those materials identified in the attached quoted services. In addition, the attached quoted services shall be performed to the entire satisfaction of the City. All unsatisfactory Work, all faulty or defective Work, and all Work not conforming to the requirements of the Agreement or of such inspections, tests, or approvals shall be considered defective. Prompt notice of all defects shall be given to the Contractor. All defective work, whether or not in place, may be rejected, corrected, or accepted.
- Subcontractors. Contractor will be fully responsible for all acts and omissions of any Subcontractors and of persons directly or indirectly employed by them and of persons for whose acts any of them may be liable to the same extent that it is responsible for the acts and omissions of persons directly employed by the company.



- Permits. Contractor will secure and pay for all permits, certifications, and licenses and will pay all governmental charges and inspection fees necessary for the prosecution of the attached quoted services.
- Laws and Regulations. Contractor will give all notices and comply with and cause all Subcontractors to comply with all federal, state, and/or local laws, ordinances, requirements, standards, rules and/or regulations ("Laws") applicable to the attached quoted services and materials to be provided. If Contractor performs any services contrary to such laws, it shall bear all costs arising therefrom.
- Taxes. Contractor will pay all sales, consumer, use, and other similar taxes required by the law of the place where the Work is to be performed. Notwithstanding the preceding sentence, no sales tax shall be charged to the City on any of the material and/or equipment incorporated or used in the performance of the Work.
- Indemnification and Limitations of Liability. Contractor, shall indemnify and save harmless the City, its officers, council members, agents, contractors, assigns, volunteers, and employees from and against all claims, demands, liabilities, suits, judgments and decrees, including reasonable attorneys' fees and other professional fees, losses and costs and expenses attributable in whole or in part to the performance of the attached quoted services by Contractor or its employees, agents, servants, associates, or Subcontractors or any breach by Contractor of any representation, warranty, covenant, duty or obligation ; City shall not be liable to Contractor or any Subcontractor, of any tier, for any lost profits, special, incidental, punitive, exemplary or consequential damages, including but not limited to frustration of economic or business expectations, loss of profits, loss of capital, cost of substitute product(s), facilities or services, or down time cost, even if advised of the possibility of such damages, arising out of or resulting from the City's performance or non-performance of the City's obligations under this Agreement, or from the City's termination or suspension of Work under this Agreement, or for any other reason. Furthermore, the City shall not be liable in contract or tort to Contractor, Subcontractors, or suppliers thereof, regardless of tier, for incidental or consequential damages arising out of or resulting from the City's performance or non-performance of the City's obligations under the Agreement, or from the City's termination or suspension of attached quoted services under the Agreement.
- Warranty and Guarantee. Contractor will perform the attached quoted services in accordance with this Agreement, the Laws, and, at a minimum, that degree of care and skill ordinarily exercised by and consistent with the standards of care of others ordinarily providing the same or similar services/work in the same or similar locality as the area where the Work is to be performed. Contractor further warrants and guarantees to the City that all materials and equipment will be new unless otherwise specified and that all Work will be, at a minimum, of the degree of care and skill set forth above and in accordance with the requirements of the Agreement and of any inspections, tests, or approvals. Contractor warrants and guarantees that title to all Work, materials and equipment covered by an application for payment, whether incorporated in the Project or not, will have passed to the City prior to the making of the application for payment, free and clear of all liens, claims, security interests, and encumbrances (referred to below as "liens"); and that no work, materials, or equipment covered by an application for payment will have been acquired by the Contractor or by any other person performing the Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest or encumbrance is retained by the seller or otherwise imposed by the Contractor or such other person.
- Work Stoppage. If the attached quoted services are defective, or if A Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or if Contractor fails to make prompt payments to Subcontractors or for labor, materials, or equipment, the City may order the Contractor to stop the Work, or any portion thereof, until the cause for such an order has been eliminated; however this right of the City to stop the Work shall not give rise to any duty on the part of the City to exercise this right for the benefit of the Contractor or any other person or entity.
- Correction or Removal of Defective Work. If required by the City prior to approval of final payment, Contractor will promptly, without cost to the City and as specified by the City, either correct any defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by the City, remove it from the site and replace it with non-defective Work. If the Contractor does not correct defective Work or remove and replace rejected Work within a reasonable time, all as specified in a written notice from the City, the City may have the deficiency corrected or the rejected Work removed or replaced. All direct or indirect costs of such correction or removal and replacement, including compensation for additional professional services, shall be paid by the Contractor.

A handwritten signature in blue ink, appearing to be a stylized 'S' or similar character, written over the 'Initials' label.



- Termination. The Agreement may also be terminated by either party upon providing at least a thirty (30) day prior written notice (a) in the event that City or Contractor fails to perform substantially in accordance with the terms and conditions of the Agreement or (b) for the sole convenience of the City or Contractor. Upon written notice to Contractor, the City may also exercise its right to early termination in the event of the cancellation of funds, a change of priorities, or cancellation of a program with no right of appeal available to Contractor. City shall reimburse Contractor for Work actually and properly performed by the Contractor up to the date of termination. The City has the right to monitor performance, certification, and any subsequent recourse available in the event of default or non-performance by Contractor.
- Force Majeure. Except for payment of sums due and except as otherwise specified herein, neither Party shall be liable to the other nor deemed in default under the Agreement if and to the extent that such Party's performance under the Agreement is prevented by reason of Force Majeure. The term "Force Majeure" means an occurrence that is beyond the control of the Party affected and occurs without its fault or negligence. Force Majeure shall not include (i) late performance by a Subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with the terms and conditions set forth herein and (ii) the Contractor's failure to comply with the terms and conditions of this Agreement regarding disaster recovery.
- Registration with a Federal Work Authorization Program. Contractor shall comply with the requirements of the Official Code of Georgia ("O.C.G.A") Sec. 13-10-91 and Rule 300-10-1-.02 and compliance therewith is a condition of the Agreement. Compliance shall include but not be limited to execution of the attached Contractor Affidavit and Agreement and Subcontractor Affidavit should there be any subcontractor or subcontractors.
- Jurisdiction. The Agreement shall be governed and interpreted by the laws of the State of Georgia and any action brought to clarify or enforce this Agreement shall be brought in a court of competent jurisdiction located in Cobb County, Georgia.
- Contractual Relationship. The relationship between the City and Contractor is that of an independent contractor. Contractor is not authorized to act as an agent, employee, or legal representative of the City, and may not hold itself out to the public as such. The method and manner of performance of the Work shall be under the exclusive control of the Contractor. The City shall have the right to inspect such undertakings at any time without prior notice.
- Entire Agreement. This Agreement contains the entire agreement between the parties. No modification or amendment of this Agreement shall be of any force or effect unless made in writing and executed by Purchaser and Seller. Should any provision or term of any exhibits, attachments, or other matters incorporated herein by reference conflict with or differ from the provisions of this Agreement, this Agreement shall control.
- Severability. This Agreement is intended to be performed in accordance with and only to the extent permitted by all applicable laws, ordinances, rules and regulations. If any of the provisions of this Agreement or the application thereof to any person or circumstances shall for any reason and to any extent be invalid or unenforceable, then the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by law.



IN WITNESS WHEREOF, each of the parties hereto has executed this Contract as of the date first above written.

The City of Powder Springs, Georgia

S.H. Creel Contracting LLC

Albert Thurman
Mayor Al Thurman

Scott Creel
Scott Creel

Mayor
Title

President
Title

Date: 02/15/2023

Juliet R...
Approved as to form, City Attorney

Attest: Kelly Axt
Kelly Axt, City Clerk



CONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with the City of Powder Springs, Georgia, has registered with and is participating in a federal work authorization program* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this Contract with the City of Powder Springs, Georgia, Contractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or a substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the City of Powder Springs, Georgia, at the time the subcontractor(s) is retained to perform such service.

1596892

EEV Basic Pilot Program* User Identification Number

S. H. Creel Contracting, LLC

BY: Authorized Officer or Agent Date
(Contractor Name)

[Signature] - President
Title of Authorized Officer or Agent of Contractor

S. H. Creel
Printed Name of Authorized Officer or Agent

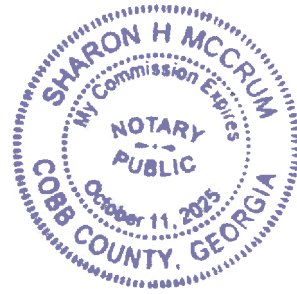
SUBSCRIBED AND SWORN BEFORE ME ON THIS THE

8th DAY OF February, 2023

Sharon H. McCrum
Notary Public

My Commission Expires:

10/11/2025



* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV Basic Pilot Program" operated by the U. S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

EXHIBIT A

S.H. Creel Contracting
756 WHITE BLOSSOM CT
POWDER SPRINGS, GA 30127-6416
screel@shcreel.com
www.shcreel.com



Estimate

ADDRESS

City of Powder Springs
4484 Marietta Street
Powder Springs, GA 30127

ESTIMATE # Outdoor Furniture

DATE 12/14/2022

EXPIRATION DATE 02/03/2023

ACTIVITY	DESCRIPTION	UOM	QTY	RATE	AMOUNT
Material	Uline - Metal Picnic Table - 46" Square, Green		18	1,150.00	20,700.00
Material	Uline - ADA Metal Picnic Table - 46" Square, Green		2	1,180.00	2,360.00
Material	Uline - Thermoplastic Trash Can - 32 Gallon, Funnel Lid, Green		8	530.00	4,240.00
Material	Uline - Mounting Hardware for table		11	40.00	440.00
Material	Wabash Valley - 46" Picnic Game Table Top		4	1,750.00	7,000.00
Material	Uline - Mounting Hardware for table		4	40.00	160.00
Labor	Labor to Build Tables		24	125.00	3,000.00
Labor	Labor to Install Tables at Powder Springs Park - 2 Locations at same park		24	100.00	2,400.00
Delivery Fee	Uline Delivery Fee		1	600.00	600.00
Delivery Fee	Wabash Delivery Fee		1	600.00	600.00
Delivery Fee	S.H. Creel Delivered to project		1	500.00	500.00
Transaction Fee	Material Taxes		1	2,443.00	2,443.00

TOTAL

\$44,443.00

Accepted By

Accepted Date



February 8, 2023

City of Powder Springs
Attn: Pam Conner
4484 Marietta Street
Powder Springs GA 30127

Re: City of Powder Springs
Powder Springs Park Furniture

Dear Ms. Conner,

Enclosed are three (3) original contracts for the City of Powder Springs Powder Springs Park Furniture Project.

Please execute/date all contracts. Two (2) contracts should be returned to the attention of Lesley Weaver at Croy Engineering.

Please let me know if you have any questions regarding the enclosed.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chad R. Kastner".

Chad R. Kastner
Program Manager

Enclosure(s) – (3) Original Contract Documents