

AN ORDINANCE approving the awarding of ITB #8594828 - SERVICE AGREEMENT – 2023 PARKS PLAYGROUNDS – NORTHSIDE & BOONE - (\$295,000.00) by the City of Fort Wayne, Indiana, by and through its Board of Park Commissioners and MIDSTATES RECREATION, LLC for the PARKS AND RECREATION DEPARTMENT.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA;

SECTION 1. That ITB #8594828 - SERVICE AGREEMENT – 2023 PARKS PLAYGROUNDS – NORTHSIDE & BOONE - by the City of Fort Wayne, Indiana, by and through its Board of Park Commissioners and MIDSTATES RECREATION, LLC for the PARKS AND RECREATION DEPARTMENT, respectfully for:

All labor, insurance, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary to provide and install playground equipment;

involving a total cost of TWO HUNDRED NINETY-FIVE THOUSAND 00/100 DOLLARS – (\$295,000.00) all as more particularly set forth in said ITB #8594828 - SERVICE AGREEMENT – 2023 PARKS PLAYGROUNDS – NORTHSIDE & BOONE which is on file in the Office of the Department of Purchasing, and is by reference incorporated herein, made a part hereof, and is hereby in all things ratified, confirmed and approved.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY

Malak Heiny, City Attorney

2023 Fort Wayne Parks Playgrounds Selection Criteria Results Summary

Vendor	Lawton Park	McMillen Park	Kettler Park	Bob Arnold Northside Park	Foster Park	Tillman Park	Turpie Playlot	Kreager Park	Gren Park	Boone Park
Commercial Recreation Group	846	831	786	741	786	801	891	816	786	861
MidStates Recreation	741	771	831	891	831	831	861	801	831	891
Miracle Playgrounds of IN	678	783	843	N/A	N/A	693	783	828	843	723
Recreation InSites	813	813	765	813	813	813	753	843	813	708
Sinclair Recreation	891	891	831	831	891	831	861	831	831	861
Snider Recreation	768	783	813	768	813	843	690	783	783	675



Denotes Highest Total Score per Park

Maximum Possible Score: 891



SERVICE AGREEMENT:
2023 Parks Playgrounds – Northside & Boone
Project #2023052, Quest #8594828, Q#0296

SUPPLIER NAME MidStates Recreation, LLC	CITY DEPARTMENT Parks and Recreation
STREET ADDRESS 1279 Hazelton Etna Rd. SW	STREET ADDRESS 705 E. State Blvd.
CITY, STATE, ZIP CODE Pataskala, OH 43062	CITY, STATE, ZIP CODE Fort Wayne, IN 46805
ATTENTION/ PHONE Wendy Mink 614.855.3790	ATTENTION/ PHONE Dave Weadock 260.427.6417

Service Description	Rates
Provide and install new playground equipment at Northside Park and Boone Park.	
Aggregate Price	\$295,000.00

The following is made a part of this Agreement:

This Agreement is entered into between Supplier and the City. The additional terms and conditions on the reverse side hereof are part of this Agreement. Capitalized terms on this page are used as defined terms when the context so requires. The City may extend the Contract at its option, for an equivalent period, by written notice to the Supplier not less than thirty days prior to the expiration date.

SUPPLIER:

For Independent Contractors: Will any individuals other than yourself perform work on this project? Yes ☐ No ☐
o If yes, see reverse side for Worker's Comp. requirement.

By (Signature):

Printed Name:
John B. Hobson
Date:
09/25/2023

BOARD OF PARK COMMISSIONERS:

By (Signature):

Printed Name:
Steve McDaniel
Date:
9/25/23

ADDITIONAL TERMS AND CONDITIONS

1. **SERVICES.** Supplier agrees to perform the Services beginning on the Begin Date and continuing until the Services are completed. Supplier warrants that the Services will be completed on or before the End Date. **TIME IS OF THE ESSENCE.** Supplier warrants that all Services shall conform to the Service Description, be of good quality and workmanship, and be free from defects. Supplier further warrants that all goods furnished in connection with the Services shall be merchantable and suitably safe and sufficient for the purpose for which they are normally used. Supplier warrants that it has good title to goods supplied hereunder and that they are free of all liens and encumbrances. These warranties are in addition to those implied in fact or in law. For the purposes of this Agreement, the term "Services" shall include any goods furnished in connection with the Services.
2. **INVOICES.** Supplier shall invoice the City for Services performed according to the latest Billing Interval, and Invoice Address. Invoices shall be rendered in triplicate and shall itemize the Services performed, the Service Address, and the corresponding rates and taxes, if any. Payment shall be due within thirty (30) days after the invoice date or the date of completion of the invoiced Services, whichever occurs later, provided that the City shall not be obligated to make any payment to Supplier hereunder until Supplier has furnished proof satisfactory to the City of full payment for all labor, materials, supplies, machinery, and equipment furnished for or used in performance of this Agreement or has furnished all necessary waivers of lien supported by affidavits, all satisfactory to the City, establishing that all liens and rights to claim liens that could arise out of the performance of the Services have been waived. Payment of invoices shall not constitute acceptance of the Services, and invoices shall be subject to adjustment for defects in quality or any other failure of Supplier to meet the requirements of this Agreement. The City may at any time set off any amount owed by the City to Supplier against any amount owed by Supplier or any of its affiliated companies to the City.
3. **INDEPENDENT CONTRACTOR RELATIONSHIP.** City and Supplier are and shall remain as independent contractors with respect to each other. The persons provided by Supplier to perform the Services shall be Supplier's employees and shall be under the sole and exclusive direction and control of Supplier. They shall not be considered employees of the City for any purpose. Supplier shall be responsible for compliance with all laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions, and payment of wages with respect to such persons. Supplier shall also be responsible for payment of taxes, including federal, state and municipal taxes chargeable or assessed with respect to its employees, such as Social Security, unemployment, Workers' Compensation, disability insurance, and federal and state withholding. Supplier shall also be responsible for providing such reasonable accommodations, including auxiliary aids and services, as may be required under the Americans With Disabilities Act, 42 U.S.C. 12101 et seq., so as to enable any disabled person furnished by Supplier to perform the essential functions of the job. Supplier agrees to defend, indemnify, and hold harmless the City from and against any loss, cost, claim, liability, damage, or expense (including attorney's fees) that may be sustained by reason of Supplier's failure to comply with this paragraph.
4. **INDEMNITY.** Supplier shall defend, indemnify, and hold harmless the City (including its officers, employees, and agents) from all demands, damages, liabilities, costs, and expenses (including reasonable attorney's fees), judgments, settlements, and penalties of every kind arising out of its performance of Services including, without limitation, damages for personal injury or death or loss or damage to property due, or claimed to be due, to the negligence or willful misconduct of Supplier including such portion thereof due, or claimed to be due, to the negligence of the City except that Supplier shall have no duty to hold harmless the City for such portion of the foregoing proximately caused by negligence or misconduct of the City, and if any suit, claim, or demand was defended by Supplier, then the City will reimburse Supplier for its pro-rata share of its costs, expenses (including reasonable attorney's fees), and damages. The City may elect to participate in the defense of any suit, claim, or demand by employing attorneys at its own expense, without waiving Supplier's obligations to indemnify, defend, or hold harmless. Supplier shall not settle or compromise any claim, suit, or action, or consent to entry of judgment without the prior written consent of the City and without an unconditional release of all liability by each claimant or plaintiff to the City.
5. **LIMITATION OF LIABILITY.** Each party's liability to the other for any loss, cost, claim, liability, damage, or expense (including attorneys' fees) relating to or arising out of any negligent act or omission in its performance of obligations arising out of this Agreement, shall be limited to the amount of direct damage actually incurred. Absent gross negligence or knowing and willful misconduct which causes a loss, neither party shall be liable to the other for any indirect, special or consequential damage of any kind whatsoever.
6. **INSURANCE.** Supplier shall maintain in full force and effect during the performance of the Services the following insurance coverage; provided, however, that if a High Risk Insurance Attachment is attached hereto, the requirements of the High Risk Insurance Attachment shall be substituted in lieu of the following requirements:

(a) Worker's Compensation	per statutory requirements *
(b) General Liability	\$1,000,000 minimum per occurrence/ \$2,000,000 aggregate
(c) Automobile Liability	\$1,000,000 minimum per occurrence
(d) Products Liability	\$1,000,000 minimum per occurrence
(e) Completed Operations Liability	\$1,000,000 minimum per occurrence

* Independent Contractors that hire others and indicate that they do NOT carry workers comp insurance must submit a valid Clearance Certificate approved by the Worker's Compensation Board of Indiana.

The Certificate of Insurance must show the City of Fort Wayne, its Divisions and Subsidiaries as an Additional Insured and a Certificate Holder, with 30 days notification of cancellation or non-renewal. All Certificates of Insurance should be sent to the following address:
City of Fort Wayne Purchasing Department
200 East Berry Street, Suite 400
Fort Wayne, IN 46802
7. **HAZARDOUS MATERIALS.** Supplier will provide to the City before performing any Services, a statement describing any Hazardous Materials intended and necessary for use in performing the Services. "Hazardous Materials" means any item which may be classified under Federal, state, or local law, as hazardous or toxic. Supplier must comply with all federal, state, or local law in the use, transportation, and disposal of such Hazardous Materials.
8. **PROGRESS REPORTS.** The Supplier shall submit progress reports to the City upon request. The report shall serve the purpose of assuring the City that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date. This contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.
9. **CONFLICT OF INTEREST.** Supplier certifies and warrants that neither it nor any of its directors, officers, agents, representatives or employees which will participate in any way in the performance of the Supplier's obligations hereunder has or will have any conflict of interest, direct or indirect, with the City of Fort Wayne or any of its departments, divisions, agencies, officers, directors or agents.
10. **CONFIDENTIALITY OF DATA, PROPERTY RIGHTS IN PRODUCTS, AND COPYRIGHT PROHIBITION.** Supplier further agrees that all information, data findings, recommendations, proposals,

- etc. by whatever name described and by whatever form therein secured, developed, written or produced by the Supplier in furtherance of this contract—shall be the property of the City. The Supplier shall take action as is necessary under law to preserve such property rights in and of the City while such property is within the control and/or custody of the Supplier. By this contract the Supplier specifically waives and/or releases to the City any copyrightable property right of the Supplier to copyright, license, patent or other wise use such information, data findings, recommendations proposals, etc.
11. **CONFIDENTIALITY OF CITY INFORMATION.** Supplier understands and agrees that data, materials, and information disclosed to Supplier may contain confidential and protected data. Therefore, the Supplier promises and assures that data, material, and information gathered, based upon or disclosed to the Supplier for the purposes of this contract, will not be disclosed to others or discussed with other parties without the prior written consent of the City.
 12. **EMPLOYER CERTIFICATION.** In accordance with I.C. §22-5-1-7, Supplier understands and agrees to enroll and verify work eligibility status of all newly hired employees of the contractor through E-Verify program or any other system of legal residence verification as approved by the United States Department of Homeland Security or the department of homeland security. Supplier further understands that they are not required to verify work eligibility of status of newly hired employees of the Supplier through the E-Verify program if the E-Verify program no longer exists. Supplier certifies that they do not knowingly employ any unauthorized aliens.
 13. **COMPLIANCE WITH LAWS.** Supplier warrants that the Services shall be in strict conformity with all applicable local, state and federal laws including, but not limited to, the standards promulgated by the Occupational Safety and Health Act, Executive Order 11246, as amended, relative to Equal Employment Opportunity and all other applicable laws, rules, and regulations, including the Civil Rights Act of 1964 pertaining to equal opportunity, Section 503 of the Vocational Rehabilitation Act of 1973, the American with Disabilities Act, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 and all applicable immigration laws and regulations including the 1986 Immigration Reform and Control Act et. seq. Supplier agrees to indemnify and hold harmless the City from and against any loss, cost, claim, liability, damage, or expense (including attorney's fees) that may be sustained because of Supplier's breach of such warranty.
 14. **DEFAULT.** In the event that (a) Supplier breaches any warranty contained herein; (b) Supplier fails to provide the insurance certificate required herein; (c) Supplier or Supplier's insurance carrier fails to defend, indemnify, or hold harmless the City as required herein; (d) Supplier's performance of the Services violates applicable law; (e) Supplier admits insolvency, makes an assignment for the benefit of creditors, or has a trustee appointed to take over all or a substantial part of its assets; or (f) Supplier fails to perform or comply with any other provision of this Agreement, such failure, breach, or violation shall constitute a default under this Agreement.
 15. **TERMINATION.** In the event of default by Supplier under this Agreement, the City reserves the right without liability, in addition to its other rights and remedies, to terminate this Agreement by notice to Supplier as to the position of the Services not yet rendered and to purchase substitute services at Supplier's expense. Supplier shall reimburse the City for the cost of such substitute services upon Supplier's receipt of an invoice therefor.
 16. **WAIVER.** No action or inaction by the City shall constitute a waiver of any right or remedy.
 17. **CANCELLATION.** City may at any time cancel this Agreement in whole or in part for its sole convenience upon written notice to Supplier, and Supplier shall stop performing the Services on the date specified in such notice. The City shall have no liability as a result of such cancellation, except that the City will pay Supplier the Rates for completed Services accepted by the City and the actual incurred cost to Supplier for Services in progress. These payments shall not exceed the Aggregate Price.
 18. **FORCE MAJEURE.** Neither party shall be liable to the other or responsible for nonperformance of any of the terms of this Agreement due to unforeseeable causes beyond the reasonable control and without the fault or negligence of such party, including, but not restricted to acts of God or the public enemy, acts of government, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather.
 19. **NOTICES.** All notices required or permitted to be made or given hereunder by one party to the other party shall be in writing and shall be deemed to have been given when hand delivered, or on the date stated on the receipt if deposited in the United States mail in certified form, postage prepaid with return receipt requested, and addressed to such other party at its Notice Address or at such other address as may be specified by such other party by written notice sent or delivered in accordance herewith.
 20. **ASSIGNMENT.** Any assignment, in whole or in part, of Supplier's rights or obligation under this Agreement without the prior written consent of the City shall be void. Supplier shall not use subcontractors to perform any part of the Services without the prior written consent of the City.
 21. **DISPUTE RESOLUTION.** The City shall be the sole judge of the quality of services. In the event of any dispute or disagreement between the parties either with respect to the interpretation of any provision of this agreement, or with respect to the performance of either party hereunder, the dispute shall be resolved by the Director of Finance and Administration and will not be subject to arbitration.
 22. **ACCESS TO RECORDS.** The Supplier shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the cost incurred. They shall make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract for inspection by the City or by any other authorized representative of city government. Copies thereof shall be furnished at no cost to the City if requested.
 23. **NONDISCRIMINATION.** Pursuant to IC 22-9-1-10, the Civil Rights Act of 1964, and Title VI, Supplier and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this contract. The Supplier shall not discriminate with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Acceptance of this contract also signifies compliance with applicable Federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.
 24. **MISCELLANEOUS.** If any provision of this Agreement is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall not be affected. This Agreement shall be governed by the laws of the state of Indiana and shall be subject to the exclusive jurisdiction of the courts therein. This Agreement embodies the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understanding, whether written or oral, and all contemporaneous oral agreements and understandings relating to the subject matter hereof. No agreement hereafter made shall be effective to modify or discharge this Agreement, in whole or in part, unless such agreement is in writing and signed by the party against whom enforcement of the modification or discharge is sought. The paragraph headings are for convenience only and are not intended to affect the interpretation of the provisions hereof. This agreement shall be binding on the parties hereto and their respective personal and legal representatives, successors and assigns.



E.B.E. RIDER: Midstates Recreation LLC.

E.B.E. RIDER

THIS AGREEMENT made and entered into by and between the CITY OF FORT WAYNE, hereinafter referred to as OWNER and MidStates Recreation, LLC, hereinafter referred to as CONTRACTOR,

WITNESSETH:

WHEREAS, the CONTRACTOR is the apparent low bidder on construction project commonly referred to as the Northside Park and Boone Park Playgrounds, which project was bid under Resolution Number ITB#8594828.

WHEREAS, CONTRACTOR agrees that the goal for qualified Emerging Business Enterprises, hereinafter sometimes referred to as E.B.E.'s as subcontractors on this project is 10% of the contract amount; and

WHEREAS, OWNER has, pursuant to Executive Order 90-01 (as amended 05-08-06), adopted a goal of at least 10% of the contract amount to Emerging Business Enterprises as defined under said Executive Order (as amended 05-08-06); and

WHEREAS, said Executive Order (as amended 05-08-06) states:

"Section 2, Paragraph C. Each contractor shall be required to make a good faith effort to subcontract 10% of the contract amount to Emerging Business Enterprises on each construction contract he/she is awarded. In the event a contractor is unable to subcontract 10% of the contract amount or secure services of an Emerging Business Enterprise, he/she will be required to submit a completed Request for Waiver form on which he/she will provide a written description of the efforts taken to comply with the participation goals."

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements hereinafter contained, the sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows:

1. Conditional Award - Subject to approval by the Common Council of the City of Fort Wayne as stipulated in the construction contract to which this Rider is attached, OWNER awards the construction contract to the CONTRACTOR.
2. E.B.E. Retainage requirements - If the contractor is in compliance with the provisions of the construction contract to which this Rider is attached, the Owner will make payments for such work performed and completed. However, in any such case, the Owner will retain five percent (5%) of the total amount owing to insure compliance with this E.B.E. Rider. Upon final inspection and acceptance of the work, and determination by the Fort Wayne Board of Public Works that the contractor has made a good faith effort to subcontract 10% of the contract amount to emerging business enterprises, the contractor will be paid in full.

In the event there is a determination that good faith compliance with this E.B.E. Rider has not occurred, appropriate reduction in the final payment pursuant to paragraph 6 of this E.B.E. Rider will be made.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payments to the CONTRACTOR are not to exceed 95% of the total contract amount until the OWNER has verified that the CONTRACTOR has made good faith efforts to attain the E.B.E. goal stipulated in this E.B.E. Rider. Payment of the final 5% of the total contract amount will be dependent upon good faith efforts to comply with this E.B.E. Rider, and subject to reduction in the event of non-compliance as provided in paragraph 6 of this E.B.E. Rider.

SECTION 004591
SERVICE AGREEMENT, E.B.E. RIDER

3. Request for Waiver - If, at the time final payment application is made, contractor has not attained the ten 10% E.B.E. goal, contractor shall file with the final payment application a "Request for Waiver." Said Request for Waiver shall contain a written description of the efforts taken by Contractor to attain the 10% E.B.E. goal.
4. Determination of Waiver Requests - The Contract Compliance Department of the City of Fort Wayne shall examine all Requests for Waiver to determine if Contractor's efforts constitute good faith efforts to attain such goal and shall submit recommendations concerning said requests for Waiver for the final determination of the Board of Public Works of the City of Fort Wayne.
5. Good Faith Per Se - In any case, a Contractor shall be deemed to have made good faith efforts at compliance where E.B.E.'s have subcontracted for every sub-contract for which there are qualified E.B.E.'s available.
6. Consequence of noncompliance - In the event the Board of Public Works approves a recommendation that contractor failed to make good faith efforts at compliance, the contract shall be reduced by the amount calculated as the difference between 10% and the percentage level met. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.
7. Waiver approved - In the event the Board of Public Works determines that a good faith effort to comply with this E.B.E. Rider has been made, the contract shall not be reduced, and the balance owing to the contractor shall be paid in full.

IN WITNESS WHEREOF,

The parties have executed the E.B.E. Rider this 25th day of September, 2023.

CONTRACTOR

BY:  Company Midstates Recreation LLC.

Name Printed John B. Hobson

ATTEST:



Steve McDaniel, Director

Fort Wayne Parks and Recreation

Revised 2-09

Vendor Disclosure

CITY OF FORT WAYNE, INDIANA

Midstates Recreation LLC.
(Vendor Name)

VENDOR DISCLOSURE STATEMENT RELATING TO:

1. FINANCIAL INTERESTS;
2. POTENTIAL CONFLICTS OF INTEREST;
3. CURRENT AND PENDING CONTRACTS OR PROCUREMENTS

Vendors desiring to enter into certain contracts with the City of Fort Wayne, Indiana (the "City") shall disclose their financial interests, potential conflicts of interest and current and pending contract or procurement information as set forth below.

The following disclosures by Vendors are required for all contracts with annual payments by the City in the amount of \$50,000 or more. Vendors shall disclose their financial interests, potential conflicts of interest and other contract and procurement information identified in Sections 1, 2 and 3 below as a prerequisite for consideration for a contract awarded by the City. This Disclosure Statement must be completed and submitted together with the Vendor's contract, bid, proposal or offer.

A publicly traded entity may submit its current 10K disclosure filing in satisfaction of the disclosure requirements set forth in Sections 1 and 2 below.

Section 1: Disclosure of Financial Interest in Vendor

- a. If any individuals have either of the following financial interests in Vendor (or its parent), please check all that apply and provide their names and addresses (attach additional pages as necessary):

- (i) Equity ownership exceeding 5% ☐
- (ii) Distributable income share exceeding 5% ☐
- (iii) Not Applicable (If N/A, go to Section 2) ☒

Name: _____ Name: _____

Address: _____ Address: _____

- b. For each individual listed in Section 1a. show his/her type of equity ownership:

sole proprietorship ☐ stock ☐
partnership interest ☐ units (LLC) ☐
other explain) _____

- c. For each individual listed in Section 1a. show the percentage of ownership interest in Vendor (or its parent):
ownership interest:

Name: _____ %
Name: _____ %

Section 2: Disclosure of Potential Conflicts of Interest (not applicable for vendors who file a 10K)

For each individual listed in Section 1a. check "Yes" or "No" to indicate which, if any, of the following potential conflict of interest relationships apply. If "Yes", please describe using space under applicable subsection (attach additional pages as necessary):

- a. City employment, currently or in the previous 3 years, including contractual employment for services:
Yes ___ No ☒

- b. City employment of "Member of Immediate Family" (defined herein as: *Spouse, Child, Step Child, Parent or Step Parent, Father-in-law or Mother-in-law, Brother or Sister, Step Brother or Step Sister, Half Brother or Half Sister, Brother-in-law or Sister-in-law, Son-in-law or Daughter-in-law, Grandparent or Step Grandparent, Grandparent or Step Grandparent of Spouse, Grandchild*)

Including contractual employment for services in the previous 3 years:

Yes ___ No ☒

- c. Relationship to Member of Immediate Family holding elective City office currently or in the previous 3 years: Yes ___ No ☒

- c. Relationship to Member of Immediate Family holding appointive City office currently or in the previous 3 years:

Yes ___ No ☒

Section 3: DISCLOSURE OF OTHER CONTRACT AND ~~PROCUREMENT~~ RELATED INFORMATION

Type text here

- a. Does Vendor have current contracts (including leases) with the City?

Yes ___ No ☒

If "Yes", identify each current contract with descriptive information including purchase order or contract reference number, contract date and City contact below (attach additional pages as necessary).

- b. Does Vendor have pending contracts (including leases), bids, proposals, or other pending procurement relationship with the City?

Yes ☐ No ☒

If "Yes", identify each pending matter with descriptive information including bid or project number, contract date and City contact using space below (attach additional pages as necessary).

- c. Does vendor have any existing employees that are also employed by the City of Fort Wayne?

Yes ☐ No ☒

If "Yes", provide the employee's name, current position held at vendor, and employment payment terms (hourly, salaried, commissioned, etc.).

Name / Position / Payment Terms: _____

Name / Position / Payment Terms: _____

Name / Position / Payment Terms: _____

- d. Does vendor's representative, agent, broker, dealer or distributor (if applicable) have any existing employees that are also employed by the City of Fort Wayne? For each instance, please provide the name of the representative, agent, broker, dealer or distributor; the name of the City employee, and the payment terms (hourly, salaried, commissioned, etc.).

e. Company / Name / Payment / Terms:

Company	/	Name	/	Payment	/	Terms:

Section 4: CERTIFICATION OF DISCLOSURES

In connection with the disclosures contained in Sections 1, 2 and 3 Vendor hereby certifies that, except as described in attached Schedule A:

- a. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, been debarred, suspended, proposed for debarment declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. No officer or director of Vendor (or its parent) or individual listed in Section 1a. is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offense;
- c. Vendor (or its parent) has not, within the five (5) year period preceding the date of this Disclosure Statement, had one or more public transactions (federal, state or local) terminated for cause or default;
- d. No officer or director of Vendor (or its parent) or individual listed in Section 1a. has, within the five (5) year period preceding the date of this Disclosure Statement, been convicted, adjudged guilty, or found liable in any criminal or civil action instituted by the City, the federal or state government or any other unit of local government; and
- e. Neither Vendor, nor its parent, nor any affiliated entity of Vendor, or any of their respective officers, directors, or individuals listed in Section 1a. is barred from contracting with any unit of any federal, state or local government as a result of engaging in or being convicted of: (i) bid-rigging; (ii) bid-rotating; or (iii) any similar federal or state offense that contains the same elements as the offense of bid-rigging or bid-rotating
- f. Pursuant to IC 5-22-16.5, Vendor hereby certifies they do NOT provide \$20 million dollars or more in goods or services to the energy sector of Iran. Vendor also certifies it is not a financial institution that extends \$20 million dollars or more in credit that will provide goods or services to the energy sector of Iran or extends \$20 million dollars or more in credit to a person identified on the list as a person engaging in investment activities in Iran.

The disclosures contained Sections 1, 2 and 3 and the foregoing Certifications are submitted by

Midstates Recreation LLC.

(Name of Vendor)

1279 Hazelton Etna Rd. SW., Pataskala, Ohio 43062

Address

(614) 855-3790

Telephone

wendym@midstatesrecreation.com

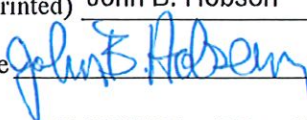
E-Mail Address

The individual authorized to sign on behalf of Vendor represents that he/she: (a) is fully informed regarding the matters pertaining to Vendor and its business; (b) has adequate knowledge to make the above representations and disclosures concerning Vendor; and (c) certifies that the foregoing representations and disclosures are true and accurate to the best of his/her knowledge and belief.

Name (Printed) John B. Hobson

Title President

Signature



Date 8/14/2023

NOTE: FAILURE TO COMPLETE AND RETURN THIS FORM WITH YOUR DOCUMENTATION MAY RESULT IN YOUR CONTRACT, OFFER, BID OR PROPOSAL BEING DISQUALIFIED FROM CONSIDERATION.

COUNCIL DIGEST SHEET

Enclosed with this introduction form is a tab sheet and related material from the vendor(s) who submitted bid(s). Purchasing Department is providing this information to Council as an overview of this award.

RFPs & BIDS

Quest vBid #	8594828
Awarded To	MidStates Recreation, LLC
Amount	\$295,000.00
Conflict of interest on file?	☒ Yes ☐ No
Number of Registrants	13
Number of Bidders	6
Required Attachments	ITB – attached; Criteria Evaluation Results

EXTENSIONS

Date Last Bid Out	0
# Extensions Granted To Date	0

SPECIAL PROCUREMENT

Contract #/ID (State, Federal, Piggyback--Authority)	n/a
Sole Source/ Compatibility Justification	

BID CRITERIA *(Take Buy Indiana requirements into consideration.)*

Most Responsible, Responsive Lowest	☐ Yes ☒ No <i>If no, explain below</i>
If not lowest, explain	Vendors were provided a fixed budget based upon staff-expected costs for providing equipment for playgrounds of this size. The vendor's work includes providing and installing the playground equipment at Northside Park and Boone Park. Vendor was selected based upon a comprehensive criteria evaluation form (see attached). The highest score was awarded the work for each park.

COUNCIL DIGEST SHEET

COST COMPARISON

<i>Increase/decrease amount from prior years For annual purchase (if available).</i>	n/a
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DESCRIPTION OF PROJECT / NEED

<i>Identify need for project & describe project; attach supporting documents as necessary.</i>	Playgrounds are thoroughly inspected on an annual basis and prioritized for replacement or repairs accordingly. The playgrounds were deemed high priorities for replacement due to the age of the existing equipment, condition, and availability of replacement parts. This project requires the vendor to provide and install playground equipment as designed by the vendor, and as selected based upon the criteria evaluation form.
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REQUEST FOR PRIOR APPROVAL

<i>Provide justification if prior approval is being requested.</i>	

FUNDING SOURCE

<i>Account Information.</i>	Funding Source: Supplemental Economic Development Distribution 2023 \$2,000,000 Budgeted for Park Playgrounds. 431PARP4-5431

MIDSTATES SELECTION CRITERIA EVALUATION FORM

Northside Park

A	B	C	D	E
EVALUATION CRITERIA	WEIGHT 1 - 10	SCORE 0, 1, 3, 6, 9	EXT. SCORE	COMMENTS
Vendor's qualifications and experience. Clearly stated in proposal.	10	9	90	19 Years, clearly stated
Playground manufacturer's years in business. Clearly stated in proposal.	8	9	72	Playworld. Vendor states 19 years of dealing Playworld equipment.
Installer's qualifications and experience. Clearly stated in the proposal.	8	9	72	Installer certification included
Sales Team's qualifications and experience including resumes and past project experience	6	9	54	Ranges from 5-32 years.
Warranty length for equipment and installation	8	9	72	Clearly stated in proposal
Lead time of proposed equipment, and timeframe clearly stated in proposal	8	9	72	12-14 weeks
Design utilizes the available playground space effectively and minimizes void areas	10	9	90	Excellent
Design provides for multiple activities including: motor skills, sensory system, core strength, balance, coordination and social interaction	10	9	90	Excellent
Quality of design, creativity and appropriateness for surrounding area	10	9	90	Excellent
Accessibility/Universal Design	5	9	45	Excellent
Design follows the requirements of the Request for Proposal	10	9	90	Excellent
Completeness & quality of the proposal	6	9	54	Excellent
MAXIMUM POSSIBLE SCORE:	891	TOTAL:	891	

WEIGHT = How important we feel this Selection Criteria is to the position.

Values range from 1 through 10. 1 = Low, 10 = High.

SCORE = How well this proposal meets the Selection Criteria.

Zero: Does not meet criteria, 1 = Low, 3 = Fair, 6 = Good, 9 = Excellent.

EXT. SCORE = Column B times Column C

Source: Six-Sigma/Cause and Effect Matrix; as amended.

MIDSTATES SELECTION CRITERIA EVALUATION FORM

Boone Park

A	B	C	D	E
EVALUATION CRITERIA	WEIGHT 1 - 10	SCORE 0, 1, 3, 6, 9	EXT. SCORE	COMMENTS
Vendor's qualifications and experience. Clearly stated in proposal.	10	9	90	19 Years, clearly stated
Playground manufacturer's years in business. Clearly stated in proposal.	8	9	72	Playworld. Vendor states 19 years of dealing Playworld equipment.
Installer's qualifications and experience. Clearly stated in the proposal.	8	9	72	Installer certification included
Sales Team's qualifications and experience including resumes and past project experience	6	9	54	Ranges from 5-32 years.
Warranty length for equipment and installation	8	9	72	Clearly stated in proposal
Lead time of proposed equipment, and timeframe clearly stated in proposal	8	9	72	12-14 weeks
Design utilizes the available playground space effectively and minimizes void areas	10	9	90	Excellent
Design provides for multiple activities including: motor skills, sensory system, core strength, balance, coordination and social interaction	10	9	90	Excellent
Quality of design, creativity and appropriateness for surrounding area	10	9	90	Excellent
Accessibility/Universal Design	5	9	45	Excellent
Design follows the requirements of the Request for Proposal	10	9	90	Excellent
Completeness & quality of the proposal	6	9	54	Excellent
MAXIMUM POSSIBLE SCORE:	891	TOTAL:	891	

WEIGHT = How important we feel this Selection Criteria is to the position.

Values range from 1 through 10. 1 = Low, 10 = High.

SCORE = How well this proposal meets the Selection Criteria.

Zero: Does not meet criteria, 1 = Low, 3 = Fair, 6 = Good, 9 = Excellent.

EXT. SCORE = Column B times Column C

Source: Six-Sigma/Cause and Effect Matrix; as amended.

Fort Wayne City Council Project Summary

2023 Parks Playgrounds

Project: 2023052

QuestCDN No.: 8594828

Project Description:

Through the City's 2023 Supplemental Economic Development Distribution, \$2,000,000 has been allocated to Fort Wayne Parks and Recreation for playground improvements in ten parks. The following is a summary of known project costs for playground equipment and anticipated costs for safety surfacing, borders and drainage.

Playground Equipment

Park	Selected Vendor	Equipment Cost
Lawton Park	Sinclair Recreation	\$245,000
McMillen Park	Sinclair Recreation	\$190,000
Kettler Park	Miracle Playgrounds of Indiana	\$180,000
Foster Park	Sinclair Recreation	\$200,000
Northside Park	MidStates Recreation	\$175,000
Tillman Park	Snider Recreation	\$130,000
Turpie Playlot	Commercial Recreation Group	\$120,000
Kreager Park	Recreation InSites	\$175,000
Gren Park	Miracle Playgrounds of Indiana	\$125,000
Boone Park	MidStates Recreation	\$120,000
Equipment Total		\$1,660,000

Playground Safety Surface for 10 parks

Anticipated cost of Engineered Wood FIBAR Mulch	\$145,000
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Playground Border and Drainage for 10 parks

Anticipated cost of concrete border and drainage	\$195,000
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Total Project Cost	\$2,000,000
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MEMORANDUM

To: City Council Members, City of Fort Wayne
From: Dave Weadock
CC: File
Subject: Council Approval for Parks Department Playground Equipment Replacement
Date: September 19, 2023

This project includes installation of new playground equipment at the following, ten parks:

- Bob Arnold Northside Park – Council District 2
- Boone Park – Council District 5
- Foster Park – Council District 5
- Gren Park – Council District 3
- Kettler Park – Council District 5
- Kreager Park – Council District 1
- Lawton Park – Council District 5
- McMillen Park – Council District 6
- Tillman Park – Council District 6
- Turpie Playlot – Council District 6

In an effort to maximize available funds, secondary projects addressing playground safety surfacing, playground borders and drainage shall be addressed as separate contracts at a later date. In doing so, the Parks Department shall contract directly with suppliers, and avoid unnecessary markups. Please see the Fort Wayne City Council Project Summary page for information on project costs breakdown.

We respectfully request your approval of this contract so that we may proceed with the work. If you have any questions, please feel free to contact me at 427-6417 or Steve Schuhmacher at 427-6401. I will also be available at the Council meeting to answer any questions.

Thank you in advance.

Dave Weadock
Manager of Project Administration
Fort Wayne Parks and Recreation