

CITY OF WILSONVILLE GOODS AND SERVICES CONTRACT

This Goods and Services Contract (“Contract”) for the Regional Parks 7-8 Playground and Structures Project (“Project”) is made and entered into on this ____ day of April 2022 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Northwest Playground Equipment, Inc.**, a Washington corporation (hereinafter referred to as “Contractor”).

RECITALS

WHEREAS, the City requires services which Contractor is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Contractor represents that Contractor is qualified to perform the services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Contractor is prepared to provide such services, as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Scope of Work

Contractor will provide and install playground equipment, shelters, Shaw grass, and wood fiber at Regional Parks 7-8, as more particularly described in the Quotation for the Project, attached hereto as **Exhibit A** and incorporated by reference herein (the “Work”).

Section 2. Term

The term of this Contract shall be from the Effective Date until all Work required to be performed hereunder is completed and accepted, or no later than December 31, 2022, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City. Contractor shall diligently perform the Work according to the requirements identified in the Scope of Work.

Section 3. Contract Sum/Project Scope

3.1. Except as otherwise set forth in this **Section 3**, the City agrees to pay Contractor the fixed price of FOUR HUNDRED FIFTY THOUSAND SIX HUNDRED FIFTY-TWO DOLLARS AND FORTY-FOUR CENTS (\$450,652.44) for performance of the Work (“Contract Sum”). Any compensation in excess of the Contract Sum will require an express written Change Order between the City and Contractor. Contractor’s unit pricing is set forth in **Exhibit A**.

3.2. Contractor's Contract Sum is all inclusive and includes, but is not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits, and all other contributions and benefits, licensing, trademark, and/or copyright costs, office expenses, travel expenses, mileage, and all other indirect and overhead charges, including, but not limited to, the recently enacted Oregon Corporate Activity Tax (CAT).

3.3. Contractor will be paid one-half of the Contract Sum upon execution of this Contract, and Contractor will be paid the remainder of the Contract Sum upon completion of the Work and within thirty (30) days of receipt of an itemized invoice, unless the City disputes such invoice. In that instance, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Contractor as promptly as is reasonably possible.

Section 4. Prevailing Wages

This is a Contract for a Public Works Project, subject to ORS 279C.800 to 279C.870. Therefore, not less than the current applicable state prevailing wage must be paid on this Project. Wage rates for this project are those published by the Bureau of Labor and Industries (BOLI), effective January 1, 2022, and all subsequent amendments. The BOLI prevailing wage rate for public works contracts can be found at the following website: <http://www.oregon.gov/boli/employers/pages/prevailing-wage-rates.aspx>. Because this is a public works contract subject to payment of prevailing wages, each worker in each trade or occupation employed in the performance of the Work, either by Contractor, a subcontractor, or other person doing or contracting to do, or contracting for the whole or any part of the Work, must be paid not less than the applicable state prevailing wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279C.838 and 279C.840, if applicable. Contractor must comply with all public contracting wages required by law. Contractor and any subcontractor, or their sureties, shall file a certificate of rate of wage as required by ORS 279C.845. If the City determines at any time that the prevailing rate of wages has not been or is not being paid as required herein, it may retain from the moneys due to Contractor an amount sufficient to make up the difference between the wages actually paid and the prevailing rate of wages, and may also cancel the Contract for breach. Contractor shall be liable to the workers affected for failure to pay the required rate of wage, including all fringe benefits under ORS 279C.840(5). Contractor must include a contract provision in compliance with this paragraph in every subcontract and shall require each subcontractor to include it in subcontract(s).

Section 5. City's Rights and Responsibilities

5.1. The City will designate a Project Manager to facilitate day-to-day communication between Contractor and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

5.2. Award of this Contract is subject to budget appropriation. Funds are approved for Fiscal Year 2021-22. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this Contract early, as described in **Section 15**.

Section 6. City's Project Manager

The City's Project Manager is Dustin Schull. The City shall give Contractor prompt written notice of any re-designation of its Project Manager.

Section 7. Contractor's Project Manager

Contractor's Project Manager is Justin Playground. In the event that Contractor's Project Manager is changed, Contractor shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Contractor's Project Manager will not be changed without the written consent of the City, which consent shall not be unreasonably withheld. In the event the City receives any communication from Contractor that is not from Contractor's Project Manager, the City may request verification by Contractor's Project Manager, which verification must be promptly furnished.

Section 8. Subcontractors and Assignments

Unless expressly authorized in writing by the City, pursuant to **Subsection 10.1**, Contractor shall not subcontract with others for any of the Work prescribed herein. Contractor shall not assign any of Contractor's rights acquired hereunder without obtaining prior written approval from the City. Some Work may be performed by persons other than Contractor, provided Contractor advises the City of the names of such subcontractors and the services which they intend to provide, and the City specifically agrees, in writing, to such subcontracting. Contractor acknowledges such services will be provided to the City pursuant to a subcontract(s) between Contractor and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Contract, the City incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any attempted assignment of this Contract without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Contractor shall not be subject to additional reimbursement by the City.

Section 9. Contractor Is Independent Contractor

Except as otherwise mandated by state law, the performance of Work under this Contract is at Contractor's sole risk. All damages or loss to Work, equipment, or materials incurred during the performance of the Work shall be at Contractor's sole risk. Contractor is an independent contractor for all purposes and shall be entitled to no compensation other than the Contract Sum provided for under **Section 3** of this Contract. Contractor will be solely responsible for determining the manner and means of accomplishing the end result of Contractor's Work. The City does not have the right to control or interfere with the manner or method of accomplishing said Work. The City, however, will have the right to specify and control the results of Contractor's Work so such Work meets the requirements of the Project.

Section 10. Contractor's Responsibilities

10.1. The City understands and agrees that Contractor may request that some Work be performed on the Project by persons or firms other than Contractor, through a subcontract with Contractor. Contractor acknowledges that if such Work is provided to the City pursuant to a

subcontract(s) between Contractor and those who provide such services, Contractor may not utilize any subcontractor(s), or in any way assign its responsibility under this Contract, without first obtaining the express written consent of the City. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Contractor. References to “subcontractor” in this Contract mean a subcontractor at any tier.

10.2. Contractor must comply with all applicable Oregon and federal wage and hour laws. Contractor shall make all required workers compensation and medical care payments on time. Contractor shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Contractor shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

10.3. Contractor must maintain a City of Wilsonville or Metro business license at all times while performing Work under this Contract.

10.4. No person shall be discriminated against by Contractor or any subcontractor in the performance of this Contract on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Contract, in whole or in part, by the City. Contractor shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Contract or to the implementation of the Project. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to the Contract or the implementation of the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules, and regulations; (b) Titles VI and VII of the Civil Rights Act of 1964, as amended; (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (d) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (e) Executive Order 11246, as amended; (f) the Health Insurance Portability and Accountability Act of 1996; (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (h) the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended; (i) all regulations and administrative rules established pursuant to the foregoing laws; and (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations.

10.5. Contractor shall make payment promptly, as due, to all parties supplying to such Contractor labor or material for the prosecution of the Work provided for in the Contract.

10.6. Contractor shall make payment promptly, as due, to any party furnishing medical, surgical, hospital, or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing payment for such service.

10.7. With certain exceptions listed below, Contractor shall not require or permit any person to work more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in

case of necessity, emergency, or where public policy requires it, and in such cases the person shall be paid at least time and a half for:

10.7.1. All overtime in excess of eight (8) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or

10.7.2. All overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and

10.7.3. All work performed on the days specified in ORS 279B.020(1)(b) for public contracts.

10.8. Contractor must give notice to employees who work on a public contract, in writing, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

10.9. The hourly rate of wage to be paid by any Contractor to employed workers or other persons doing or contracting to do all or part of the work contemplated by a public contract shall be not less than the applicable wage required by law.

10.10. Contractor, and all employers working under the Contract, are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017 unless otherwise exempt under ORS 656.126.

10.11. In the performance of this Contract, Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to those dealing with the prevention of environmental pollution and the preservation of natural resources (and avoidance of natural resource damages) in the performance of the Contract, including but not limited to ORS 279C.525. If new or amended statutes, ordinances, or regulations are adopted, or Contractor encounters a condition not referred to in this Contract, not caused by Contractor, and that was not discoverable by reasonable site inspection, which requires compliance with federal, state, or local laws or regulations dealing with the preservation of the environment, both the City and Contractor shall have all the rights and obligations set forth in ORS 279C.525.

10.12. Contractor shall be liable for any fine imposed against Contractor, the City or the 'Project' as a result of a violation of any laws or permitting requirements by Contractor or any suppliers.

10.13. Contractor must maintain and provide proof of a statutory public works bond throughout the term of this Contract.

10.14. COVID-19 Safety Measures. Contractor must have a written policy in place to comply with all applicable local, state, and federal laws, regulations, and executive orders related to the COVID-19 coronavirus outbreak to ensure the protection of Contractor's employees and/or subcontractors, City employees, and the public. Contractor must provide its written policy to the City

Project Manager at the commencement of the Project. In the event that Contractor is required to stop or delay work due to a COVID-19 related event, Contractor shall not be entitled to any additional payment, remobilization costs, or delay damages.

Section 11. Indemnity

11.1. Indemnification. Contractor acknowledges responsibility for liability arising out of the performance of this Contract, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Contractor's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Contract, or from Contractor's failure to perform its responsibilities as set forth in this Contract. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Contractor shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Contractor of its responsibility to perform in full conformity with the City's requirements, as set forth in this Contract, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Contractor's negligent performance of this Contract, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 11.2**. Contractor shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Contractor. As used herein, the term "Contractor" applies to Contractor and its own agents, employees, and suppliers, and to all of Contractor's subcontractors, including their agents, employees, and suppliers.

11.2. Standard of Care. In the performance of the Work, Contractor agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Contractor's profession practicing in the Portland metropolitan area. Contractor will re-perform any Work not meeting this standard without additional compensation. Contractor's re-performance of any Work, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Contractor's failure to perform in accordance with the applicable standard of care of this Contract and within the prescribed timeframe.

Section 12. Insurance

12.1. Insurance Requirements. Contractor must maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or work hereunder. Any and all agents or subcontractors with which Contractor contracts for any portion of the Work must have insurance that conforms to the insurance requirements in this Contract. Additionally, if a subcontractor is an engineer, architect, or other professional, Contractor must require the subcontractor to carry Professional Errors and Omissions insurance and must provide to the City proof of such coverage. The amount of insurance carried is in no way a limitation on Contractor's liability hereunder. The policy or policies maintained by Contractor shall provide at least the following minimum limits and coverages at all times during performance of this Contract:

12.1.1. Commercial General Liability Insurance. Contractor and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Contract,

comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an “occurrence” form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Contract and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Contract.

12.1.2. Business Automobile Liability Insurance. If Contractor or any subcontractors will be using a motor vehicle in the performance of the Work herein, Contractor shall provide the City a certificate indicating that Contractor and its subcontractors have business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

12.1.3. Workers Compensation Insurance. Contractor, its subcontractors, and all employers providing work, labor, or materials under this Contract that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer’s Liability Insurance with coverage limits of not less than **\$500,000** each accident.

12.1.4. Insurance Carrier Rating. Coverages provided by Contractor and its subcontractors must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

12.1.5. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Contractor’s liabilities hereunder in insurance coverages. Additional Insured coverage under Contractor’s Commercial General Liability, Automobile Liability, Pollution Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: “The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers.” An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days’ written notification of any termination or major modification of the insurance policies required hereunder. Contractor must be an additional insured on the insurance policies obtained by its subcontractors performing any of the Work contemplated under this Contract.

12.1.6. Certificates of Insurance. As evidence of the insurance coverage required by this Contract, Contractor shall furnish a Certificate of Insurance to the City. This Contract shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Contractor agrees that it will not terminate or change its coverage during the term of this Contract without giving the City at least thirty (30) days' prior advance notice and Contractor will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

12.2. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Contractor shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are "Claims Made" policies, Contractor will be required to maintain such policies in full force and effect throughout any warranty period.

Section 13. Warranty

13.1. Contractor warrants to the City that any materials and equipment furnished under this Contract will be new and of good quality, unless otherwise required or permitted by this Contract, that the Services will be free from defects, and that the Services will conform to the requirements of this Contract. Services not conforming to these requirements, including substitutions not properly approved and authorized in writing by the City, may be considered defective.

13.2. Equipment warranties are attached hereto as **Exhibit B**. Supplier hereby agrees that Supplier will timely and thoroughly perform all warranty work. Work will be performed at the City's location unless the work cannot reasonably be performed on site. In that case, Supplier will be responsible for transporting the Equipment in need of warranty work from Wilsonville and back to Wilsonville. Supplier agrees to provide full warranty for labor and materials for all Equipment delivered to the City for a length of time not less than the manufacturer warranty for the specific Equipment. All warranties are from the date of delivery and acceptance by the City, and are in addition to, and not in lieu of, any other warranties provided by various manufacturers.

Section 14. Suspension

The City may suspend, delay, or interrupt all or any part of the Services for such time as the City deems appropriate for its own convenience by giving written notice thereof to Contractor. An adjustment in the time of performance or method of compensation shall be negotiated as a result of such delay or suspension, unless the reason for the delay was within Contractor's control. The City shall not be responsible for Services performed by any subcontractors after notice of suspension is given by the City to Contractor.

Section 15. Early Termination; Default

15.1. This Contract may be terminated prior to the expiration of the agreed upon terms:

15.1.1. By mutual written consent of the parties;

15.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Contractor by mail or in person; or

15.1.3. By Contractor, effective upon seven (7) days' prior written notice, in the event of substantial failure by the City to perform in accordance with the terms through no fault of Contractor, where such default is not cured within the seven (7) day period by the City. Withholding of disputed payment is not a default by the City.

15.2. If the City terminates this Contract in whole or in part, due to default or failure of Contractor to perform Work in accordance with the Contract, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Contractor shall be liable for all costs and damages incurred by the City as a result of the default by Contractor, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Contract. This Contract shall be in full force to the extent not terminated by written notice from the City to Contractor. In the event of a default, the City will provide Contractor with written notice of the default and a period of three (3) days to cure the default. If Contractor notifies the City that it cannot, in good faith, do so within the three (3) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Contract and seek remedies for the default, as provided above.

15.3. If the City terminates this Contract for its own convenience not due to any default by Contractor, payment of Contractor shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Contractor against the City under this Contract.

15.4. Termination under any provision of this **Section 15** shall not affect any right, obligation, or liability of Contractor or the City that accrued prior to such termination. Contractor shall surrender to the City items of work or portions thereof, for which Contractor has received payment or the City has made payment.

Section 16. Contract Modification; Change Orders

Any modification of the provisions of this Contract shall not be enforceable or binding unless reduced to writing and signed by both the City and Contractor.

Section 17. Notices

Any notice required or permitted under this Contract shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of Wilsonville
 Attn: Dustin Schull, Parks Supervisor
 29799 SW Town Center Loop East
 Wilsonville, OR 97070

To Contractor: Northwest Playground Equipment, Inc.
Attn: Justin Playground
PO Box 2410
345 NW Dogwood Street
Issaquah, WA 98027

Section 18. Miscellaneous Provisions

18.1. Integration. This Contract, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these or any other documents, the provisions of this Contract shall control, and the terms most favorable to the City, within the City's sole discretion, will apply.

18.2. Legal Effect and Assignment. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Contract may be enforced by an action at law or in equity.

18.3. No Assignment. Contractor may not assign this Contract, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

18.4. Adherence to Law. This Contract shall be subject to, and Contractor shall adhere to, all applicable federal, state, and local laws (including the Wilsonville Code and Public Works Standards), including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Contractor is required by law to obtain or maintain in order to perform the Work described in this Contract shall be obtained and maintained throughout the term of this Contract.

18.5. Governing Law. This Contract shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Contract as if fully set forth herein.

18.6. Jurisdiction. Jurisdiction and venue for any dispute will be in Clackamas County Circuit Court.

18.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Contract or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Contract, such fees shall include all of the above fees, whether or not a proceeding is

initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

18.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Contract shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

18.9. Severability. If any provision of this Contract is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Contract shall remain in full force and effect, to the greatest extent allowed by law.

18.10. Modification. This Contract may not be modified except by written instrument executed by Contractor and the City.

18.11. Time of the Essence. Time is expressly made of the essence in the performance of this Contract.

18.12. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Contract, the first day from which the designated period of time begins to run shall not be included.

18.13. Headings. Any titles of the sections of this Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

18.14. Number, Gender and Captions. In construing this Contract, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Contract.

18.15. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Contract generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Contract. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Contract gives the City "sole discretion" or the City is allowed to make a decision in its "sole judgment."

18.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Contract in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

18.17. Interpretation. As a further condition of this Contract, the City and Contractor acknowledge that this Contract shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the contract, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

18.18. Entire Agreement. This Contract, all documents attached to this Contract, and all Contract Documents and laws and regulations incorporated by reference herein represent the entire agreement between the parties.

18.19. Counterparts. This Contract may be executed in one or more counterparts, each of which shall constitute an original Contract but all of which together shall constitute one and the same instrument.

18.20. Authority. Each party signing on behalf of Contractor and the City hereby warrants actual authority to bind their respective party.

The Contractor and the City hereby agree to all provisions of this Contract.

CONTRACTOR:

CITY:

Northwest Playground Equipment, Inc.

City of Wilsonville

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

Employer I.D. No. _____

APPROVED AS TO FORM:

Ryan Adams, Assistant City Attorney
City of Wilsonville, Oregon



EXHIBIT A Northwest Playground Equipment, Inc.

PO Box 2410, Issaquah, WA 98027-0109
Phone (425) 313-9161 FAX (425) 313-9194
Email: sales@nwplayground.com

QUOTE

This quote is only valid for 30 days.

To: Dustin Schull
Re: City of Wilsonville
Regional Park 7 and 8

Quote # 3232022JP1
Date: 2/28/2022

Contact Name: Dustin Schull Phone: 503.570.1544
Email: dschull@ci.wilsonville.or.us Cell/Fax:

Item #	Qty	Description	Price	Total Price
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EQUIPMENT

Earthscape

1	Salem Timber Stack	\$ 35,639.00	\$ 35,639.00
7	Notched Post 5	\$ 1,222.16	\$ 8,555.12
6	Notched Post 7	\$ 1,222.16	\$ 7,332.96
1	Log Pile 3.2	\$ 11,031.78	\$ 11,031.78

IDSculpture

SC004	1 T Rex	\$ 21,200.00	\$ 21,200.00
AP004	1 Home Tree	\$ 18,900.00	\$ 18,900.00
AP003	1 Dig Bones (Set of 4 with vertebrae, ribs, skull and hips and legs)	\$ 2,400.00	\$ 2,400.00
CB008	1 Transition Boulder (granite)	\$ 8,950.00	\$ 8,950.00
	1 Material surcharge	\$ 2,572.51	\$ 2,572.51

ShawGrass Turf

1	540 SF of Shaw Grass playground turf for install on mound provided by others. Cost includes installation.	\$ 11,880.00	\$ 11,880.00
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Wood Fiber

1	215 Cubic Yards of Zeager Bros. Certified Engineered Wood Fiber Safety Surfacing (12in After Compaction) and One Layer of Fabric for 5 Separate Areas Totaling 3809 Square Feet Area. Price Includes, Freight, and Blower Installation	\$ 11,825.00	\$ 11,825.00
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Poligon Shelters

OTC-24TGSS	2 24' Parasol Octagon Shelter with Tongue and Groove Primary Roof and Standing Seam Metal Secondary Roof, Wind Speed 130, Ground Snow Load 30, 2014 OR Structural Building Code. Price includes stamped engineered drawings and sealed calculations.	\$ 34,605.00	\$ 69,210.00
OTC-32-TGSS	1 32' Parasol Octagon Shelter with Tongue and Groove Primary Roof and Standing Seam Metal Secondary Roof, Wind Speed 130, Ground Snow Load 30, 2014 OR Structural Building Code. Price includes stamped engineered drawings and sealed calculations.	\$ 48,660.00	\$ 48,660.00

	Equipment Subtotal		\$ 258,156.37
<i>IDSculpture</i>	<i>NASPO Value Point Cooperative Purchasing Discount:</i>	<i>NASPO 6.00%</i>	\$ (3,241.35)
<i>Shaw Grass</i>	<i>NASPO Value Point Cooperative Purchasing Discount:</i>	<i>NASPO 5.00%</i>	\$ (594.00)
<i>Zeager</i>	<i>NASPO Value Point Cooperative Purchasing Discount:</i>	<i>NASPO 15.50%</i>	\$ (1,832.88)
<i>Poligon</i>	<i>NASPO Value Point Cooperative Purchasing Discount:</i>	<i>NASPO 10.00%</i>	\$ (11,787.00)

Poligon OTC 24 Freight: \$ 13,440.00

Poligon OTC 32 Freight: \$ 6,720.00

Earthscape Freight: \$ 7,004.63

IDS Freight: \$ 4,533.33

Equipment Total (less tax) \$ 272,399.10

CERTIFIED INSTALLATION

\$ -
\$ 80,786.67

Installation of above listed playground equipment. Price includes receipt of material, installation, and disposal of all packaging materials. Does not include subgrade prep or digging through rock.

\$ 97,466.67

Installation on above listed Poligon shelters. Includes receipt of material, assembly of shelters on concrete pads supplied by others, disposal of all packaging materials

Installation Total: \$ 178,253.33

WARRANTY

Parts Replacement Warranty

5 Years

Earthscapes warrants that if any of our playground components fail due to defects in workmanship or materials, we will provide replacement for all parts found defective without cost provided that the initial installation and subsequent repair were completed by Earthscape or under their supervision/consultation. Labor and shipping to replace warranted parts to be supplied by others. Warranty period begins from date of delivery.

Earthscape additionally warrants against:

Structural failure, due to corrosion and/or deterioration caused by defects in materials and manufacturing workmanship as follows:

Stainless steel hardware	30 years
Posts made of Robinia	15 years
Accoya® wood products	10 Years
AYC wood products (excluding Glulam)	10 years
Galvanized structural components	10 years
All other metal components	10 years
Glulam wood products	5 years
All other wood elements	5 years
Plastic and composite components	3 years
Cables/Rope	2 years
Moving parts	1 year
Moving water components	1 year
Electronic components	1 year
Wood stain – vertical	1 year
Wood stain – horizontal	no warranty

Exclusions

Warranty claims will be compromised should any claim be a result of:

1. Vandalism, abuse, misuse or accident.
2. Normal cosmetic changes such as: scratches, dents, marring, fading, discoloration, cable fraying.
3. Acts of God such as: hail, flooding, lightning, tornadoes, sandstorms, earthquakes, windstorms.
4. Environmental factors such as: windblown or human dispersed aggregates, salt spray, salt water, and chlorinated water.
5. Timber elements contain knots, knot holes, checks, and splits. These cosmetic defects become more prominent over time. Replacement or repair of non-structural defects is excluded from warranty.
6. Normal Wear and Tear
7. Failure to Maintain in accordance with Playground Safety Standards and manufacturer's requirements.
8. Improper Installation: When installed by a 3rd party
9. Unauthorized additions, alterations or repairs by other than Earthscape
10. Unintentional Playground Safety Standards Non-Compliance oversight which was not reported within 12 months after the date of invoice.
11. Other regulatory requirements or inspector comments that exceed or are outside of the scope of Playground Safety Standards.
12. Termite or other insect damage due to installation in areas known to be infested with aggressive wood-damaging insects.

Commercial Playground Limited Warranty for Playsafe 50 Turf

The following is the Commercial Playground Limited Warranty issued by Shaw Industries, Inc. ("Shaw") for our Playsafe 50 Turf made with poly-ethylene sports performance fibers, and coated with a polyurethane unitary backing system.

This Commercial Playground warranty begins when the turf is purchased. **The turf must be installed in accordance with Shaw Industries installation guidelines and specifications.** The turf must be maintained in accordance with Shaw Industries maintenance (turf care) recommendations and such maintenance continues throughout the duration of the original installation.

This Warranty is further limited to the period of time the turf is owned and maintained by the original end-use purchaser. The basis of any warranty related claim is the original authorized Shaw dealer invoice. Damage resulting from the failure to follow these instructions will not be covered under this warranty.

Installation guidelines and specifications along with turf care recommendations can be obtained from your dealer or from The Shaw Information Center at 1-800-441-7429.

Ten year limited warranty coverage:

Fiber – Fiber Degradation - Shaw warrants that the **Playsafe 50 Turf**, when installed and maintained as recommended by Shaw Industries for proper outdoor use, will not display ultraviolet (UV) degradation, resulting in fiber deterioration or loss.

(Failure is defined as the loss of 25 % of the tufted products based on the original weight of the products at the time of manufacturing per test method ASTM D 5848).

Actual degradation will cause a deterioration of the yarn and loss of pile as a result. Failure does not include a decrease in pile height of the face yarn from the original pile height as a result of surface compression due to normal wear.

Five year limited warranty coverage:

Backing - Tuft Bind - Shaw warrants that our **Playsafe 50 Turf**, when installed and maintained as recommended by Shaw Industries, under normal use, will meet industry standards for tuft bind.

Backing - Integrity/Delamination - Shaw warrants that our **Playsafe 50 Turf**, when installed and maintained as recommended by Shaw Industries, under normal use, will not delaminate from the face of the turf.

Note: The construction, fiber and backing system used in these products are designed and engineered for use when installed in playground and general play area applications.

What you should do if any of the above problems occur and you need warranty service:

You (the original purchaser) should notify the authorized Shaw Dealer and/or your Shawgrass representative and submit in writing, the following:

- A valid proof of purchase in the form of a sales receipt or other documents which establish proof of purchase.
- A detailed description of the problem and/or a photograph/sample that clearly shows the warranty problem.

Shaw Industries will designate a representative to inspect the Turf and evaluate the warranty claim.

What Shaw Industries will do should you need warranty service:

Should a defect covered under this warranty be found, the affected area will be repaired to conform to the warranty. If repair is not commercially practical, Shaw may, at its sole option, replace the affected turf or refund the proportional purchase price for the affected area.

Shaw will pay the reasonable costs for freight and labor. Any costs incurred for the moving of equipment, furnishings, and the like, that were installed over the turf will be at the consumer's expense.

What conditions apply to Shaw Industries Commercial limited Warranty of Playsafe 50 Turf:

This commercial playground warranty specifically excludes:

- a) Turf not installed in accordance with Shaw installation guidelines.
- b) General soiling, discoloration and appearance change due to flattening of pile or pattern due to pile distortion.
- c) Staining or fading from exposure to substances or contaminants which degrade or destroy the face fiber or the color of the turf.
- d) Turf installed on stairs/landings or in areas subject to abnormal use.
- e) Turf exposed to abusive wear from abrasion or from pivot points when using inappropriate foot wears i.e. ski boots, metal cleats, hard plastic cleats, metal golf spikes, or sports equipment.
- f) Turf installed in inappropriate applications. i.e. under playground such as swings, slide landing areas or other high friction play equipment, unless rubber mats are placed over the Playsafe 50 Turf and under all swings, slide exits and around all "merry go round" type structures and other high friction play equipment.
- g) Turf installed where standing water, floods and/or flooding conditions exist.
- h) Turf installed on contact sports fields I.E. football, soccer, lacrosse, etc., unless these fields are designed for general purpose recreational play. Example: There is a big difference between a general recreation play area where elementary school kids play soccer during recess and a regulation soccer field that hosts high school, college and professional team competitions.
- i) Burns, cuts, accidents, vandalism, abuse, negligence or neglect.
- j) Improper design or failure of the base or sub-base of the landscape.
- k) Wear or abrasion caused by inadequate base or sub-base.
- l) Wear or movement of product due to lack of infill on infilled products.
- m) Use of improper infill products.
- n) Use of improper cleaning agents, pesticides, herbicides, or chemicals, and maintenance methods not recommended by Shaw.
- o) Failure to properly maintain, protect or repair the turf.
- p) Damage caused by reflection (melting) or other flammable materials.
- q) As with any manufactured flooring product, there can be occasional slight differences in color between "dye lots". Shaw cannot be responsible for any color shading differences between different rolls of turf.

Please note - The warranty is not transferable. It extends only to the original purchaser. Shaw does not grant to any person or entity the authority to create for it any obligation or liability in connection with this product. Shaw shall not be liable to the consumer or any other person or entity for any incidental, special or consequential damages, arising out of breach of this limited warranty or any implied limited warranty (excluding merchantability).

All implied warranties, including an implied warranty of merchantability or fitness for a particular purpose, are hereby limited to the duration of this limited warranty. Some states do not allow the exclusion or limitation of implied warranties or the limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to the purchaser. This warranty gives the purchaser specific legal rights, such rights may vary from State to State.

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Porter Corp Limited Warranty and Limitations

Porter Corp provides a 10-year pro-rated limited warranty from shipping date with the following limitations. Porter Corp limits its warranty to the supply of materials that will assemble according to sealed engineered drawings and installation instructions, and can be assembled with normal expertise and with tools required and found in the construction trades. It is expressly understood that Porter Corp's liability be limited to repair or replacement of nonconforming material at time of delivery.

Porter Corp does not warrant product for defects caused by erection, harsh site conditions, lack of maintenance, and/or other conditions beyond Porter Corp's control. Porter Corp will not be held responsible for any materials that were not properly stored prior to installation. Porter Corp reserves the right to void the limited warranty if it not installed per the installation instructions and/or unauthorized modifications.

Porter Corp shall not be held liable for field alterations. Porter Corp shall only be liable for meeting the building code indicated on the sealed engineered drawings.

Any replacement part under warranty is warranted for the remaining original warranty period or six (6) months, whichever is longer.

Under certain conditions (snow, wind, and the like), Fabric tops may be required to be taken down. The sealed engineered drawings and installation instructions will need to be referenced for design parameters. Porter Corp shall not be responsible to cover damage caused by failure to remove the top as required.

This Limited Warranty supersedes all other warranties expressed or implied.

The warranty on items not manufactured by Porter Corp (i.e. metal roofing, shingles, wood shelters, fabric and thread as applicable), will be as passed through Porter Corp's supplier as per their warranty; contact Customer Service for this Supplier Warranty.

This Limited Warranty is conditional upon payment in full to Porter Corp within terms. Liability under this Warranty is limited in that it shall not exceed the original sales price of the components as supplied by Porter Corp.



Poli-5000 Paint System 10 Year Limited Warranty for Structural Steel Shelters

This limited warranty is for the factory applied Poli-5000 powder coating. Poli-5000 powder coat paint system by Porter Corp of Holland, Michigan has been applied to steel entirely as an ‘in-house’ process. Poli-5000 finish has been applied over hot rolled structural steel parts and has been tested to meet or exceed the ASTM Standards illustrated in Figure 1.

This pro-rated limited 10 year warranty is intended to define the obligations and limitations of the purchaser as well as the obligations and limitations of the supplier. This limited warranty is only valid if Porter Corp has been paid in full for the cost of the shelter.

Damage occurring from shipping, erection, vandalism, accidents, or field modifications will require field touch-up immediately and periodically thereafter, which is not covered in this limited warranty.

Exposed nuts and bolts will either be supplied with a light plating or powder coating. It is the responsibility of the contractor to paint and/or touch up the nuts and bolts after erection and these must be maintained by the customer.

The 10-year limited warranty will exclude buildings erected at sites where salt air, corrosive environment, high humidity or sprinkler systems come in contact with the shelter.

Failure to maintain finish system with annual touch-up and documented maintenance procedures will void the limited warranty.

Not covered by this limited warranty are acute angles, end plates, and other accessories that are prone to minor defects on occasions and will require touch-up by owner.

Failure of the coating will be defined when at least 8% of the total coated surface has significant loss of performance or appearance characteristics when compared to the original finish. Rust stains from roof trim, screws, and screw holes do not constitute a failure.

If a claim is made for paint failure a complete document must be provided by the owner. If a site visit is required by Porter Corp the travel expenses will be covered by the customer prior to travel taking place. However, should the failure be determined to be under the limited warranty the customer will be reimbursed for these expenses.

In the case of a failed paint system, Porter Corp will repaint the structure with its best in-house system providing that the owner dismantles the structure and returns it to Porter Corp. Porter Corp will refinish the structure and ship it back to job site at their expense. The refinishing will not extend the original warranty of the paint system. The owner is responsible for erecting the building at their expense. As an alternative, Porter Corp will pay customer up to the cost of the original paint system on a pro-rated basis for time left of the 10 year limited warranty.



Poli-5000 Finish System Performance and Specifications

Figure 1

Test Description	Test Method	Poli-5000 Results
Salt Spray Resistance	ASTM B 117/ ASTM D 1654 Method 2 (scraping)	10,000 hours, no creep from scribe line, rating of 10
Humidity	ASTM D2247-02	5,000 hours with no loss of adhesion or blistering
Light UV/ Resistance	ASTM G154-04 2000 hours exposure. Alternate cycles (4 hours UVC and 4 hours condensation)	a) No chalking b) 75% color retention c) Color variation-maximum 3.0 E variation CIE formula (before and after 2,000 hours exposure)
Stain Resistance	ASTM D1308-02e1 24 hours exposure with 10% concentration	No stain from following: Mustard, Tannic Acid, Catsup, Citric Acid, Coffee, Tartaric Acid, Pepsi Cola, Beer, Oleic Acid, Lactic Acid, Orange Juice
Scratch Resistance	Hoffman Scratch Hardness Tester	No substrate appearance with 1,000 gram load
Adhesion	ASTM D3359-02	ASTM Class 4B rating or better
Resistance Impact	ASTM D2794-93	10 in-lbs. w/o cracking
Hardness	ASTM D3363-92a	2H min-no indentation
Flexibility	ASTM D522-93a	1/8" no cracking/loss of adhesion at bend
Abrasion	Taber abraser CS10 Wheel (1,000 mg load)	14 mg. max weight loss per cycle
Solvent Resistance	50+ MEK rubs	Minimal to no dulling or color removal