



CONSTRUCTION AGREEMENT GENERAL CONDITIONS

THIS AGREEMENT is made and entered into this ____ day of _____, 2021, by and between the **CITY OF MISSOULA, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, 435 Ryman Street, Missoula, Montana 59802, hereinafter referred to as “City,” and Play Space Designs located at 5698 S Shady Farm Lane, Murray, Utah 84107 , hereinafter referred to as “Contractor.”

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. Purpose: City agrees to hire Contractor as an independent contractor to perform the work described in the Project Drawings, and Quote sheet attached hereto as Exhibit A, and B, and by this reference made a part hereof (hereinafter referred to as the “Work”).

2. Effective Date: This Agreement is effective upon the date of its execution and will terminate on the 31st day of August, 2022. The parties may extend this Agreement in writing prior to its termination.

3. Scope of Work: Contractor shall furnish all labor, equipment and materials necessary to complete the following items:

- a. Provide and install Duraplay poured in place fall zone material per plans and specifications and as described in the quote dated December 30th 2021
- b. Remove and reinstall playground equipment as needed or coordinate with playground equipment installer as necessary to accommodate installation.
- c. Properly dispose of all trash and debris associated with the installation of poured in place materials.
- d. Coordinate installation with Owners Construction Manager
- e. Provide manufacturers installation warrantee certificate, operating manual and any spare materials to the City upon completion of the work.

The Work shall be completed by August 31st, 2022 and must be coordinated with owners Construction Manager, playground installation contractor and site work contractors.

4. Payment: City agrees to pay Contractor THREE HUNDRED FOURTEEN THOUSAND SIX HUNDRED EIGHTY DOLLARS AND FORTY THREE CENTS (\$314,680.43) for the Work. The City may be billed at the end of each month for all work completed in accordance with the terms of the contract.

5. Materials and Workmanship: All materials and equipment shall be installed in a neat and workmanlike manner. The City reserves the right to direct the removal and replacement

of any items, which in their opinion shall not present an orderly and reasonably neat or workmanlike appearance, provided such time can be properly installed in such orderly way by the usual methods in such work. Such removal and replacement shall be done, when directed in writing, at the Contractor's expense without additional cost to the City. Whenever any material is specified by name and/or number thereof, such specifications shall be deemed to be used for the purpose of facilitating a description of the materials and establishing quality, and shall be deemed and construed to be followed by the words "or approved equal." No substitutions will be permitted which have not been submitted for prior approval by the Project Manager. All materials shall be new and without flaws or defects and shall be the best of their class and kind. Sufficient descriptive literature and/or samples must be furnished for any materials submitted as "equal" substitutes

6. Retainage: City shall retain \$1,000 to be paid to the Contractor unless and until city parks and recreation accepts the work performed pursuant to the contract.

7. Additional Services: Any alteration or deviation from the described work that involves extra costs will be permitted only upon written request by the City to Contractor and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing.

8. Independent Contractor Status: The parties agree that Contractor is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Contractor is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Contractor is not authorized to represent the City or otherwise bind the City in any dealings between Contractor and any third parties.

Contractor shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Contractor shall maintain workers' compensation coverage for all members and employees of Contractor's business, except for those members who are exempted as independent contractors under the provisions of §39-71-401, MCA.

Contractor shall furnish City with copies showing one of the following: **(1)** proof of registration as a registered contractor under Title 39, Chapter 9, MCA; **(2)** a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or **(3)** proof of exemption from workers' compensation granted by law for independent contractors.

9. Indemnity: The Contractor shall hold harmless, indemnify and shall defend the City, its employees, representatives, and agents from any and all liability claims, demands, losses, costs, damages, expenses or liability to the extent arising or alleged to arise from the Contractor's performance of the Work described herein, but not including the sole negligence of the City. Contractor shall procure and maintain in force, at its expense, the liability insurance required below to effectuate this provision.

10. Insurance: Before commencing the Work, the Contractor shall submit written evidence to the City that Contractor and all Subcontractors have obtained for the period of the Contract, full Comprehensive General Liability Insurance coverage. This coverage shall provide for both bodily injury and property damage. The Comprehensive General Liability Insurance must include the City as an Additional Named Insured. Contractor shall provide the City with proof of Contractor's liability insurance issued by a reliable company or companies for personal injury and property damage in amounts not less than as follows:

- a. Commercial General Liability - \$1,000,000 per occurrence; \$2,000,000 annual aggregate
- b. Automobile Liability - \$1,000,000 property damage/bodily injury; \$2,000,000 annual aggregate

11. Warranty: The Contractor shall guarantee all materials and equipment furnished and work performed a period of two years from the date of written acceptance of the Work unless specified otherwise.

12. Compliance with Laws: Contractor agrees to comply with all federal, state and local laws, ordinances, rules and regulations, including the safety rules, codes, and provisions of the Montana Safety Act in Title 50, Chapter 71, MCA. Contractor agrees to obtain and maintain a City business license.

13. Contractors' Gross Receipts Tax: Contractor understands that all contractors or subcontractors working on a publicly funded project are required to pay or have withheld from earnings one percent (1%) of the gross contract price if the gross contract price is Five Thousand Dollars (\$5,000) or more.

14. Nondiscrimination: All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status or sexual orientation, gender identity or expression, except where these criteria are reasonable bona fide occupational qualifications.

15. Affirmative Action Policy: Contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan, and Title 49 Montana Codes Annotated, entitled "Human Rights" or forfeit the right to continue such business dealings.

The City's Affirmative Action Policy Statement is:

The Mayor of the City of Missoula or the Mayor's designee may adopt an affirmative action plan to provide all persons equal opportunity for employment without regard to race, ancestry, color, disability, religion, creed, national origin, sexual orientation, gender identity or expression, age, marital status. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment

decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered on the basis of job necessity.

Specific responsibility for developing, implementing, monitoring and reporting are assigned to the City Personnel staff under the supervision and direction of the Chief Administrative Officer and the Mayor.

It is the policy of the City of Missoula to eliminate any practice or procedure that discriminates illegally or has an adverse impact on an "affected" class. Equal opportunity shall be provided for all City employees during their terms of employment. All applicants for City employment shall be employed on the basis of their qualifications and abilities.

The City of Missoula, where practical, shall utilize minority owned enterprises and shall ensure that subcontractors and vendors comply with this policy. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of affirmative action for the City of Missoula, its employees, program participants, trainees and applicants

16. Default and Termination: If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party may, at its option, terminate this Agreement and be released from all obligations if the default is not cured within ten (10) days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

16. Liaison: City's designated liaison with Contractor is Nathan McLeod, and Contractor's designated liaison with City is _____.

17. Jurisdiction and Venue: This Agreement and any extensions hereof shall be governed and construed in accordance with the laws of the State of Montana, and the venue for any dispute shall be in Missoula County.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

CITY OF MISSOULA

CONTRACTOR (Type Name Above)

By _____
John Engen, Mayor

By _____
Print Name _____
Print Title _____

APPROVED AS TO FORM:

ATTEST:

Jim Nugent, City Attorney

By: _____
Marty Rehbein, City Clerk