

City of Napa

Public Works Contract for Sole Source Project

This public works contract (“**Contract**”) is entered on *[Insert Date]* (“**Effective Date**”) by and between the City of Napa, a California charter city (“**City**”), and Yosso Group, Inc., a California Corporation, DBA Specified Play Equipment, Co., (“**Contractor**”), effective as of the date last signed by the City, which is identified on the signature page as the “Effective Date,” for work on the City’s Fuller Park Playable Art Project (“**Project**”). The City and Contractor may be individually referred to as a “**Party**” or collectively as the “**Parties**”.

1. The Project & Scope of Work.

1.1 The Project. The Project involves completing the following, consistent with the Contract:

- (A) The fabrication and delivery of the playground equipment identified in the plans and specifications attached as **Appendix 1 to Exhibit A, Scope of Work** at Fuller Park, 1500 Jefferson Street, Napa, CA 94559 (“**Site**”); and
- (B) Installation of the playground equipment at the Site.

This Project requires a valid California contractor’s license for the following classification(s): Specialty Contractors License “C61/D34” from CSLB and Class “A”.

1.2 The Work. Contractor will perform the work specified in **Exhibit A, Scope of Work**, attached hereto and incorporated herein, and will provide all labor, materials, equipment, supplies, transportation, and any and all other items or services necessary or incidental to fully complete the work on the Project (collectively, the “**Work**”), in accordance with the terms and conditions in this Contract, including all attachments to the Contract, and in compliance with all applicable federal, state, and local laws, regulations, codes, ordinances, rules, licenses, and permits (collectively, “**Laws**”).

1.3 Incorporation of Documents. This Contract includes and hereby incorporates in full by reference the following documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- (A) **Exhibit A, Scope of Work**
- (B) **Exhibit B, Contract Pricing**
- (C) **Exhibit C, Fabrication & Delivery Terms**
- (D) **Exhibit D, Certifications**
- (E) **Exhibit E, Bonds**
- (F) Any changes or amendments to this Contract, including Change Orders issued by the City

To the extent that any attachment contains provisions that conflict or are inconsistent with the terms set forth in the body of this Contract, the Contract terms will control.

1.4 Execution of Certifications. Before performing any Work, Contractor shall execute and return the certifications attached to this Contract as **Exhibit D, Certifications**.

1.5 City’s Representative. City hereby designates the Parks Project Manager, or his or her designee, to act as its representative for the performance of this Contract (“City’s Representative”). City’s Representative shall have the power to act on behalf of City for all

purposes under this Contract. Contractor shall not accept direction or orders from any person other than City's Representative or his or her designee.

1.6 Contractor's Representative. Before starting the Work, Contractor shall submit in writing the name, qualifications and experience of its proposed representative who shall be subject to the review and approval of City ("Contractor's Representative"). Following approval by City, Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Contract. Contractor's Representative shall supervise and direct the Work, using his best skill and attention, and shall be responsible for all construction means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Contract. Contractor's Representative shall devote full time to the Project and either he or his designee, who shall be acceptable to City, shall be present at the Work site at all times that any Work is in progress and at any time that any employee or subcontractor of Contractor is present at the Work site. Arrangements for responsible supervision, acceptable to City, shall be made for emergency Work which may be required. Should Contractor desire to change its Contractor's Representative, Contractor shall provide the information specified above and obtain City's written approval.

1.7 Contract & Site Examination. Contractor agrees that it has thoroughly examined the Site and all provisions of the Contract Documents, including the Geotechnical Report from RGH Consultants dated October 2, 2024 and January 17, 2025, certifies that it accepts all measurements, specifications and conditions affecting the Work to be performed at the Site. Contractor further agrees that it has prepared the Project plans and specifications attached to **Exhibit A as Appendix 1** that Contractor prepared under a separate contract, and that it is responsible for any errors or omissions in those plans and specifications, if any are later determined to exist. By executing this Contract, Contractor warrants that it has made all Site examination(s) that it deems necessary as to the condition of the Site and its accessibility for materials, workers and utilities. No claim for allowance of time or money will be allowed as to any other undiscovered condition on the Site, or for any additional work arising from errors or omissions in the plans and specifications attached to **Exhibit A as Appendix 1**. Contractor shall make field measurements, verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing Work. Errors, inconsistencies or omissions discovered shall be reported to the City immediately and prior to performing any work or altering the condition.

2. Contract Price. As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract, City will pay Contractor an amount not to exceed \$2,491,464 (the "**Contract Price**") for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions contained herein. The Contract Price includes the costs for the improvements in **Exhibit B, Contract Pricing**, attached hereto and incorporated herein. Contractor will not be entitled to any additional compensation, unless and only to the extent authorized by written change order executed by the City in advance of performing the change order work.

2.1 Payment. Contractor must submit a detailed payment application on the first day of each month during the Contract Time, defined in Section 3 below, and/or upon completion, for the Work performed during the preceding month, itemizing costs for labor, materials, and equipment, and any incidental costs incurred. City will pay the undisputed amount due within 30 days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code § 20104.50. Contractor warrants that title to all Work and all materials and equipment incorporated into the Work will pass to City free of any claims, liens, or encumbrances upon payment to Contractor.

2.2 Retention. City will withhold five percent from each progress payment, to be released to Contractor upon completion of the Work, in accordance with Public Contract Code § 7107(c). If retention is withheld under this Contract, substitution of securities in lieu of withholding retention from progress payments will be permitted pursuant to Public Contract Code § 22300, provided the parties have executed an escrow agreement in compliance with that section.

2.3 Bonds.

(A) *Payment and Performance Bonds.* Contractor must provide City with a payment bond and a performance bond, each for at least 100% of the Contract Price, using the bond forms included with this Contract as **Exhibit E, Bond Forms**, and submit the bonds with the executed Contract.

(B) *Warranty Bond.* Upon completion of the Work, Contractor must submit a warranty bond, using the form included in **Exhibit E, Bond Forms**, to guarantee its Work as specified in Section 16, below.

(C) *Surety Qualifications.* Only bonds executed by an admitted surety insurer, as defined in California Code of Civil Procedure Section 995.120, shall be accepted. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to City. If an issuing surety cancels a bond or becomes insolvent, Contractor must provide a substitute bond from a surety acceptable to City, within seven days following written notice from City. If Contractor fails to substitute an acceptable surety within the specified time, City may, in its sole discretion, suspend further Work until the surety is replaced to City's satisfaction, or terminate the Contract for default. Any delay in completion due to suspension of Work pursuant to this Section is deemed unexcused delay by Contractor for purposes of calculating liquidated damages.

2.4 City's Right to Withhold. In addition to Contract retentions, City may deduct from each progress payment an amount necessary to protect City from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by City in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract Price or within the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by City during the prosecution of the Work; (9) erroneous or false estimates by Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages as determined by City, incurred by City for which Contractor is liable under the Contract; and (11) any other sums which City is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including Section 1727 of the California Labor Code. The failure by City to deduct any of these sums from a progress payment shall not constitute a waiver of City's right to such sums.

2.5 Substitutions for Contract Retentions. In accordance with California Public Contract Code Section 22300, City will permit the substitution of securities for any monies withheld by City to ensure performance under the Contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with City, or with a state or federally chartered bank in California as the escrow agent, and thereafter City shall then pay such monies to Contractor as they come due. Upon satisfactory completion of the Contract, the securities shall be returned to Contractor. For purposes of this Section and Section 22300 of the Public

Contract Code, the term “satisfactory completion of the contract” shall mean the time City has issued written final acceptance of the Work and filed a Notice of Completion as required by law and provisions of this Contract. Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. The escrow agreement used for the purposes of this Section shall be in the form provided by City.

2.6 Title to Work. As security for partial, progress, or other payments, title to Work for which such payments are made shall pass to City at the time of payment. To the extent that title has not previously been vested in City by reason of payments, full title shall pass to City at delivery of the Work at the destination and time specified in this Contract. Such transferred title shall in each case be good, free and clear from any and all security interests, liens, or other encumbrances. Contractor promises and agrees that it will not pledge, hypothecate, or otherwise encumber the items in any manner that would result in any lien, security interest, charge, or claim upon or against said items. Such transfer of title shall not imply acceptance by City, nor relieve Contractor from the responsibility to strictly comply with the Contract, and shall not relieve Contractor of responsibility for any loss of or damage to items.

2.7 Labor and Materials Releases. Contractor shall furnish City with labor and material releases from all subcontractors performing work on, or furnishing materials for, the Work governed by this Contract prior to final payment by City.

3. Time for Completion.

3.1 Contract Time. Contractor will fully complete the Work consistent with all the terms and conditions of the Contract on or before [Date] (“**Contract Time**”). A “day” means a weekday when the City is open for business, and does not include holidays observed by the City. Contractor shall perform its Work in strict accordance with any completion schedule, construction schedule or project milestones developed by City. Such schedules or milestones may be included as part of **Exhibit A, Scope of Work** attached hereto, or may be provided separately in writing to Contractor. Contractor agrees that if such Work is not completed within the aforementioned Contract Time and/or pursuant to any such completion schedule, construction schedule or project milestones developed pursuant to provisions of the Contract, it is understood, acknowledged and agreed that City will suffer damage.

3.2. Force Majeure. Neither City nor Contractor shall be considered in default of this Contract for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Contract, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; pandemics or epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Contract. Contractor’s exclusive remedy in the event of delay covered under this section shall be a non-compensable extension of the Contract Time.

4. Liquidated Damages.

4.1 City’s Liquidated Damages. Time is of the essence in the performance of this Contract. Pursuant to Government Code Section 53069.85, if Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of \$1,000 per day for each day of unexcused delay in completion, and such liquidated damages may be deducted from payment otherwise due to Contractor under this Contract.

5. Responsibility for Work.

5.1 Standards.

(A) *General.* Contractor shall perform all Work under this Contract in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Work. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, including any required business license, and that such licenses and approvals shall be maintained throughout the term of this Contract. As provided for in the indemnification provisions of this Contract, Contractor shall perform, at its own cost and expense and without reimbursement from City, any work necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein. Any employee who is determined by City to be uncooperative, incompetent, a threat to the safety of persons or the Work, or any employee who fails or refuses to perform the Work in a manner acceptable to City, shall be promptly removed from the Project by Contractor and shall not be re-employed on the Work.

(B) *Safety.* Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its Work, Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Work and the conditions under which the Work is to be performed. Safety precautions as applicable shall include, but shall not be limited to, adequate life protection and lifesaving equipment; adequate illumination for underground and night operations; instructions in accident prevention for all employees, such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and adequate facilities for the proper inspection and maintenance of all safety measures. Furthermore, Contractor shall prominently display the names and telephone numbers of at least two medical doctors practicing in the vicinity of the Project, as well as the telephone number of the local ambulance service, adjacent to all telephones at the Project site.

(C) *Laws and Regulations.* Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Contract or the Work, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Work. If Contractor observes that the drawings or specifications are at variance with any law, rule or regulation, it shall promptly notify City in writing. Any necessary changes shall be made by written change order. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this

Contract to the same extent as though set forth herein and will be complied with. Contractor shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Contract, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

(D) *State Recycling Mandates.* Contractor shall comply with State Recycling Mandates. Any recyclable materials/debris collected by the contractor that can be feasibly diverted via reuse or recycling must be hauled by the appropriate handler for reuse or recycling.

5.2 Control.

(A) *General.* Contractor is responsible for supervising and directing all aspects of the Work to facilitate the timely completion of the Work. Contractor is solely responsible for and required to exercise full control over the Work, including the construction means, methods, techniques, sequences, procedures, and safety precautions and programs. Contractor will, at all times, perform the Work in a manner to avoid bodily harm to persons or damage to any property. From the date of commencement of the Work until either the date on which the City accepts the Project as complete or the effective date of termination of the Contract, whichever is later, Contractor bears all risks of injury or damage to the Work and the materials and equipment delivered to any Work site by any cause, including fire, earthquake, wind, weather, vandalism, or theft.

(B) *Control & Payment of Subordinates; Contractual Relationship.* City retains Contractor on an independent contractor basis and Contractor is not an employee of City. Any additional personnel performing the work governed by this Contract on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance under this Contract and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

5.3 Correction of Defects. Contractor will promptly correct or replace, at no additional cost to City, any Work that City determines is deficient or defective, including workmanship, materials, or equipment. If Contractor fails to correct or replace such deficient or defective Work following notice from City, City may correct or replace the deficient or defective Work and deduct the cost from payment otherwise due to Contractor.

5.4 Water Quality Management and Compliance.

(A) *Water Quality Management and Compliance.* Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); local ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

(B) *Compliance with the Statewide Construction General Permit.* Contractor shall comply with all conditions of the most recent iteration of the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity, issued by the California State Water Resources Control Board ("Permit"). It shall be Contractor's sole responsibility to file a Notice of Intent and procure coverage under the Permit for all construction activity which results in the disturbance of more than one acre of total land area or which is part of a larger common area of development or sale. Prior to initiating work, Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) as required by the Permit. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, and monitoring and reporting requirements as required by the Permit. The Permit requires the SWPPP to be a "living document" that changes as necessary to meet the conditions and requirements of the job site as it progresses through difference phases of construction and is subject to different weather conditions. It shall be Contractor's sole responsibility to update the SWPPP as necessary to address conditions at the project site.

(C) *Other Water Quality Rules Regulations and Policies.* Contractor shall comply with the lawful requirements of any applicable municipality, drainage City, or local agency regarding discharges of storm water to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

(D) *Cost of Compliance.* Storm, surface, nuisance, or other waters may be encountered at various times during construction of The Work. Therefore, the Contractor, by entering into this Contract, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Contract accordingly, and assumes any and all risks and liabilities arising therefrom.

(E) *Liability for Non-Compliance.* Failure to comply with the Permit is a violation of federal and state law. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to defend, indemnify and hold harmless City and its officials, officers, employees, volunteers and agents for any alleged violations. In addition, City may seek damages from Contractor for any delay in completing the Work in accordance with the Contract, if such delay is caused by or related to Contractor's failure to comply with the Permit.

(D) *Reservation of Right to Defend.* City reserves the right to defend any enforcement action brought against City for Contractor's failure to comply with the Permit or any other relevant water quality law, regulation, or policy. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to be bound by, and to reimburse City for the costs (including City's attorney's fees) associated with, any settlement reached between City and the relevant enforcement entity.

(E) *Training.* In addition to the standard of performance requirements set forth in this Contract, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them without impacting water quality in violation of the laws, regulations and policies described in paragraph 3.8.1. Contractor further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in paragraph 3.8.1 as they may relate to the Work provided under this Contract. Upon request, City will provide the Contractor with a list of training programs that meet the requirements of this paragraph.

5.5 Air Quality. Contractor shall fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the local air Air Pollution Control City (APCD) or Air Quality Management City with jurisdiction ("Air District") and/or California Air Resources Board (CARB). Although the Air City and CARB limits and requirements are more broad, Contractor shall specifically be aware of their application to "portable equipment", which definition is considered by Air District and CARB to include any item of equipment with a fuel-powered engine. Contractor shall comply, and shall ensure all subcontractors comply, with all applicable requirements of Title 13, California Code of Regulations Division 3, Chapter 9 and all pending amendments ("Regulation"). Throughout the Project, and for three (3) years thereafter, Contractor shall make available for inspection and copying any and all documents or information associated with Contractor's and any subcontractors' fleet including, without limitation, all Certificates of Reported Compliance, fuel/refueling records, maintenance records, emissions records, and any other information the Contractor is required to produce, keep or maintain pursuant to the Regulation upon two (2) calendar days' notice from City. Contractor shall indemnify City against any fines or penalties imposed by Air City, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Contract .

6. Permits, Certificates, and Licenses.

6.1 General. Contractor, at its sole expense, must obtain and maintain, at all times under this Contract, all appropriate permits, certificates, and licenses, including, but not limited to, the required California contractor's license and a City business license. Contractor certifies that as of the date of execution of this Contract, Contractor has a current contractor's license of the classification indicated below under Contractor's signature. Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

6.2 In-Use Off-Road Diesel-Fueled Fleets. If the Work involves the use of vehicles subject to the California Air Resources Board's In-Use Off-Road Diesel-Fueled Fleets Regulation (13 CCR § 2449 et seq.) ("**Off-Road Regulation**"), Contractor must submit to City, with the executed Contract, valid Certificates of Reported Compliance for its fleet and its listed subcontractors, if applicable, in accordance with the Off-Road Regulation, and must comply with the Off-Road Regulation, unless exempt thereunder.

8. Indemnification & Damages.

8.1 Contractor's Duty to Indemnify and Defend. To the fullest extent permitted by law, Contractor will indemnify, defend with counsel acceptable to City, and hold harmless City, its elected and appointed officials, officers, employees, agents, volunteers, and consultants (individually, an "**Indemnitee**") from and against any and all liability, demands, loss, damage, claims, settlements, expenses, fines, and costs (including, without limitation, attorney fees, expert witness fees, and costs and fees of litigation) (collectively, "**Liability**") of every nature arising out of or in connection with Contractor's acts or omissions with respect to this Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. This indemnification obligation is not limited by any limitation on the amount or type of damages or compensation payable under Workers' Compensation or other employee benefit acts, or by

insurance coverage limits, and will survive the expiration or termination of this Contract. City will notify Contractor of any third-party claim pursuant to Public Contract Code § 9201.

8.2 Loss and Damage. Except as may otherwise be limited by law, Contractor shall be responsible for all loss and damage which may arise out of the nature of the Work agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Work until the same is fully completed and accepted by City. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, City may terminate this Contract pursuant to the termination provisions hereunder; provided, however, that City needs to provide Contractor with only one (1) day advanced written notice.

9. Insurance. Contractor will obtain and maintain, at all times under this Contract, the insurance coverage required in this Section to cover the activities of Contractor and its subcontractors relating to or arising from performance of the Work. Each policy must be issued by a company licensed to do business in California, and with a strength and size rating from A.M. Best Company of A-VIII or better. Contractor must provide City with certificates of insurance and required endorsements as evidence of coverage with the executed Contract and before the City issues a notice to proceed with the Work. The procurement of the required insurance will not be construed to limit Contractor's liability under this Contract or to fulfill Contractor's indemnification obligations under this Contract. The following policies and endorsements are required for this Contract:

9.1 Workers' Compensation Insurance and Employer's Liability. The workers' compensation and employer's liability insurance policy must comply with the requirements of the California Labor Code, providing coverage of at least \$1,000,000 or as otherwise required by statute. If Contractor is self-insured, Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations ("DIR").

9.2 Commercial General Liability ("CGL"). The CGL insurance policy must be issued on an occurrence basis and written on a comprehensive general liability form, and include coverage for liability arising from Contractor's or its subcontractor's acts or omissions in performing the Work, including Contractor's protective coverage, blanket contractual, products and completed operations, broad form property damage, vehicular coverage, and employer's non-ownership liability coverage, with limits of at least \$1,000,000 per occurrence and \$2,000,000 general aggregate.

9.3 Automobile Liability. The automobile liability insurance policy must provide coverage of at least \$1,000,000 combined single-limit per accident for bodily injury, death, or property damage, including hired and non-owned auto liability.

9.4 Subrogation Waiver. Each required policy must include an endorsement that the insurer waives any right of subrogation it may have against the City or the City's insurers.

9.5 Required Endorsements. The CGL policy and the automobile liability policy must include the following specific endorsements:

(A) The City, including its elected and appointed officials, officers, employees, agents, volunteers, and consultants (collectively, "**Additional Insured**") must be named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and the policy must protect the Additional Insured against any and all liability for personal injury, death or property damage or destruction arising directly or indirectly in the performance of the Contract.

(B) The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(C) The insurance provided is primary and no insurance held or owned by City may be called upon to contribute to a loss.

(D) This policy does not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

10. Labor Code Compliance. Unless the Contract is for construction work of \$25,000 or less or alteration, demolition, or repair work of \$15,000 or less, the Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, beginning at § 1720, and the related regulations, including, but not limited to, requirements pertaining to wages, working hours and workers' compensation insurance, as further specified below. Contractor must also post all job site notices required by Laws pursuant to Labor Code § 1771.4.

10.1 Prevailing Wages. Each worker performing Work under this Contract that is covered under Labor Code § 1720, 1720.3, or 1720.9, must be paid at a rate not less than the prevailing wage as defined in §§ 1771 and 1774 of the Labor Code. The prevailing wage rates are on file with the City Engineer's office and are available online at <http://www.dir.ca.gov/DLSR>. Pursuant to Labor Code § 1775, Contractor and any subcontractor will forfeit to City as a penalty up to \$200 for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate, in addition to paying each worker the difference between the applicable wage rate and the amount actually paid.

10.2 Working Day. Pursuant to Labor Code § 1810, eight hours of labor consists of a legal day's work. Pursuant to Labor Code § 1813, Contractor will forfeit to City as a penalty the sum of \$25 for each day during which a worker employed by Contractor or any subcontractor is required or permitted to work more than eight hours during any one calendar day, or more than 40 hours per calendar week, unless such workers are paid overtime wages under Labor Code § 1815. All Work must be carried out during regular City working days and hours unless otherwise specified in Exhibit A or authorized in writing by City.

10.3 Payroll Records. Contractor and its subcontractors must maintain certified payroll records in compliance with Labor Code §§ 1771.4, 1776, and 1812, and all implementing regulations promulgated by the DIR. For each payroll record, Contractor and its subcontractors must certify under penalty of perjury that the information in the record is true and correct, and that it has complied with the requirements of Labor Code §§ 1771, 1811, and 1815. Unless the Contract Price is \$25,000 or less, Contractor must electronically submit certified payroll records to the Labor Commissioner as required under Laws.

10.4 Apprentices. If the Contract Price is \$30,000 or more, Contractor must comply with the apprenticeship requirements in Labor Code § 1777.5.

10.5 DIR Monitoring, Enforcement, and Registration. This Project is subject to compliance monitoring and enforcement by the DIR pursuant to Labor Code § 1725.5, and, subject to the exception set forth below, Contractor and any subcontractors must be registered with the DIR to perform public works projects. The registration requirements of Labor Code § 1725.5 do not apply if the Contract Price is for \$25,000 or less.

11. Workers' Compensation Certification. Under Labor Code § 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code § 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in

accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract.”

12. Project Site Conditions.

12.1 General. Contractor is responsible for properly securing the Project site to avoid property damage or injury, including damage to the Work or other real or personal property, and injury to any persons, including members of the public. Contractor is liable for any damage caused by Contractor or its subcontractors to the Work, City’s property, the property of adjacent or nearby property owners, and the work or personal property of other contractors working for City.

12.2 Clean and Safe. Contractor must maintain the Project site and staging and storage areas in a clean and neat condition and must ensure it is safe and secure. On a daily basis, Contractor must remove and properly dispose of debris and waste materials from the Project site. Contractor is solely responsible for maintaining workplace safety in compliance with all applicable safety Laws.

12.3 Inspection. Contractor will make the Work accessible at all times for inspection by the City.

12.4 Hazardous Materials. As required by California Public Contract Code Section 7104, if this Contract involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly, and prior to disturbance of any conditions, notify City of: (1) any material discovered in excavation that Contractor believes to be a hazardous waste that is required to be removed to a Class I, Class II or Class III disposal site; (2) subsurface or latent physical conditions at the site differing from those indicated by City; and (3) unknown physical conditions of an unusual nature at the site, significantly different from those ordinarily encountered in such contract work. Upon notification, City shall promptly investigate the conditions to determine whether a change order is appropriate. In the event of a dispute, Contractor shall not be excused from any scheduled completion date and shall proceed with all Work to be performed under the Contract, but shall retain all rights provided by the Contract or by law for making protests and resolving the dispute.

12.5 Unidentified Utilities. As required by Government Code § 4215, if, during the performance of the Work, Contractor discovers utility facilities not identified by City in the Contract, Contractor must immediately provide written notice to City and the utility. City assumes responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project site if those utilities are not identified in the Contract. Contractor will be compensated for the costs of locating, repairing damage not due to Contractor’s failure to exercise reasonable care, and removing or relocating utility facilities not indicated in the Contract with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Contractor will not be assessed liquidated damages for delay in completion of the Work, to the extent the delay was caused by City’s failure to provide for removal or relocation of the utility facilities.

12.6 Excavation and Trenching.

(A) *Notice of Excavation.* In performing any excavations or trenching work, Contractor must comply with all applicable requirements in Government Code § 4216 et seq.

(B) *Four Feet or More.* If the trenching or excavation extends deeper than four feet below the surface, then Contractor must comply with Public Contract Code § 7104, which provides that Contractor will promptly, and before the following conditions are disturbed,

provide written notice to City if Contractor finds any of the following conditions: (1) material that Contractor believes may be a hazardous waste, as defined in § 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing Laws; (2) subsurface or latent physical conditions at the site differing materially from those indicated in this Contract; or (3) unknown physical conditions at the site of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent in work of the character required by the Contract. Upon notice, City will promptly investigate the condition(s) and if City finds that the condition(s) will cause an increase or decrease in Contractor's cost of, or the time required for, performance of any part of the Work, City will issue a change order. In the event a dispute arises between City and Contractor regarding any of the conditions specified in this subsection (B), or the terms of a change order issued by City, Contractor will not be excused from completing the Work within the Contract Time and must proceed with all Work to be performed under the Contract, but may pursue a claim against City in accordance with Section 16.

(C) *Five Feet or More.* If the trenching or excavation extends deeper than five feet below the surface and the Contract Price exceeds \$25,000, then Contractor must comply with Labor Code § 6705, which requires the submission of a detailed plan to City for acceptance in advance of the excavation. The detailed plan must show the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If the plan varies from the shoring system standards, it must be prepared by a California registered civil or structural engineer.

13. Change Orders. City may direct, in writing, changes to the scope or requirements of the Contract, including additions or deletions to all or any part of the Work, and Contractor must comply with any such City-directed change in the Work. If any such change causes an increase or decrease in the cost of the Work or in the time required to perform such Work, Contractor will submit a change order request to City, with a detailed explanation of the resulting change in the cost or time to perform the Work and attach all appropriate documentation substantiating the claimed cost or delay. City, in its sole discretion, will determine whether, and to what extent, the change order request warrants an adjustment to the Contract Price and/or Contract Time, and will include any such adjustment(s) in a written change order. Contractor must receive written authorization from City before performing any Work that is not included in Exhibit A or an authorized change order. Contractor acknowledges and agrees that, because Contractor prepared the plans and specifications attached to **Exhibit A** as **Appendix 1** under a separate contract, Contractor shall not be entitled to a Change Order arising from errors or omissions in the plans and specifications.

14. As-Built Drawings. Unless otherwise specified in Exhibit A, Contractor must maintain and update a separate set of as-built drawings while the Work is being performed, showing changes from the Work as planned in Exhibit A or any drawings incorporated into this Contract. The as-built drawings must be updated as changes occur, on a daily basis, if necessary. Contractor will provide the as-built drawings to City upon request and upon completion of the Work.

15. Records. Contractor will maintain complete and accurate records with respect to the Work and all costs to perform the Work. Contractor must maintain its records relating to this Contract for a period of five years after City's acceptance of the Project or following Contract termination, whichever occurs first. Contractor shall grant Client a perpetual, non-exclusive, irrevocable license to a set of reproducible record prints of drawings and copies of other instruments of service for Client's use in connection with the Project, for future renovations, repairs, maintenance or operations related to the Project. Subject to prior notice to Contractor, City is entitled to inspect or audit any of Contractor's records relating to the Project during Contractor's normal business hours. Contractor's records may also be subject to examination and audit by the California State Auditor, pursuant to Government Code § 8546.7.

16. Completion and Warranty.

16.1 Final Inspection. When the Work required by this Contract is fully performed, Contractor must provide written notification to City requesting final inspection. Based on City's inspection, City may prepare a punch list of any items that are incomplete, missing, defective, incorrectly installed, or otherwise not compliant with the Contract. The omission of any non-compliant item from a punch list will not relieve Contractor from fulfilling all requirements of the Contract. Contractor's failure to complete any punch list item within the time specified in the punch list will not waive or abridge its warranty obligations for any such items that must be completed by the City or by a third party retained by the City due to Contractor's failure to timely complete any such outstanding item.

16.2 Acceptance. Upon completion or correction of all punch list items, as verified by City's inspection, and upon satisfaction of all other Contract requirements, the City Engineer will accept the Project by issuing a written notice of acceptance, effective upon the date set forth therein. In order to avoid delay of Project close out, the City may elect, acting in its sole discretion, to accept the Project as complete subject to exceptions for any punch list items that are not completed within the time specified in a punch list and may withhold up to 150% of City's estimated cost to complete the remaining items from final payment due to Contractor.

16.3 Warranty. Contractor warrants all Work under the Contract (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Contract or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by City of any defect in the Work or non-conformance of the Work to the Contract, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act sooner as requested by City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of City, regardless of whether or not such warranties and guarantees have been transferred or assigned to City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of City, City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse City for any expenses incurred hereunder upon demand.

16.4 Correction Arising from Errors or Omissions in Plans and Specifications. Without in any way impacting the above warranty obligation(s), Contractor shall be responsible for correcting any deficiencies in the Work for the Project that arise from or relate to errors or omissions in the plans and specifications attached to **Exhibit A as Appendix 1** that Contractor

prepared under a separate contract. Contractor shall within ten (10) days after being notified in writing by City of any defect in the Work arising from errors or omissions in the plans and specifications, commence and prosecute with due diligence all Work necessary to correct any such deficiency in the Work. Any Work performed by Work hereunder shall be at no cost to the City. If Contractor fails to perform the Work, the City may withhold the value of the Work from any payment owed to Contractor and prosecute the Work itself.

17. Dispute Resolution. Any dispute arising under or related to this Contract is subject to the dispute resolution procedures of Public Contract Code §§ 9204 and 20104 et seq., which are incorporated by reference.

18. Termination. City reserves the right to terminate the Contract for convenience or for cause upon written notice to Contractor. Upon receipt of such notice, Contractor must: immediately stop the Work, including under any terms or conditions that may be specified in the notice; comply with City's instructions to protect the completed Work and materials; and use its best efforts to minimize further costs.

18.1 Termination for Convenience. In the event of City's termination for convenience, Contractor waives any claim for damages, including for loss of anticipated profits from the Project. If City terminates the Contract for convenience, City will only owe Contractor payment for the Work satisfactorily performed before Contract termination, as well as five percent of the total value of the Work performed as of the date of notice of termination or five percent of the value of the Work yet to be completed, whichever is less, which is deemed to cover all overhead and profit to date.

18.2 Termination for Cause. The City may terminate this Contract for cause for any material default. Contractor may be deemed in default for a material breach of or inability to perform the Contract, including Contractor's refusal or failure to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Contract Time; refusal or failure to make prompt payment to its employees, subcontractors, or suppliers or to correct rejected work; disregard of Laws; lack of financial capacity to complete the Work within the Contract Time; or responsibility for any other material breach of the Contract requirements. If City terminates the Contract for cause, City will only owe Contractor payment for the Work satisfactorily performed before Contract termination.

19. Waiver. A waiver by City of any breach of any term, covenant, or condition in this Contract will not be deemed a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, regardless of the character of any such breach.

20. Conflicts of Interest. Contractor, its employees, subcontractors, and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or policy or in violation of any California law, including under Government Code § 1090 et seq. and under the Political Reform Act as set forth in Government Code § 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.

21. Discrimination Prohibited.

21.1 General. Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, marital status, or any other protected class is strictly prohibited. Contractor and its subcontractors are required to comply with all applicable Laws prohibiting discrimination, including Napa Municipal Code ("**NMC**") section 2.92.040, which obligates every contractor or subcontractor under a contract or subcontract to the City for public works, subject to City Charter Section 101, in the sum \$25,000 or more, to refrain from discriminatory employment practices on the basis of sex, race, color, religious creed, national origin or ancestry of any

employee of, or applicant for employment with, such contractor or subcontractor, and which is incorporated herein by reference.

21.2 Affirmative Actions. Contractor certifies that it and its “principal subcontractors,” as defined in NMC section 2.92.020, have performed, or will perform, the affirmative actions set forth in NMC section 2.92.050, as applicable, including the requirement to file a compliance report with the City Manager, pursuant to NMC section 2.92.050(C).

22. Assignment of Unfair Business Practice Claims. Under Public Contract Code § 7103.5, Contractor and its subcontractors agree to assign to City all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or any subcontract. This assignment will be effective at the time City tenders final payment to Contractor, without further acknowledgement by the parties.

23. Notice. Any notice, billing, or payment required by or pursuant to the Contract must be made in writing, signed, dated, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF file. Notice is deemed effective upon delivery, except that service by U.S. Mail is deemed effective on the second business day after deposit for delivery. Notice for each party must be given as follows:

City:

Address: 1500 Jefferson Street
City/State/Zip: Napa, CA 94558
Phone: 707-257-9955
Attn: Ali Koenig
Email: akoenig@cityofnapa.org
Copy to: eoregel@cityofnapa.org

Contractor:

Name: Specified Play Equipment Co.
Address: 121 #1 Industrial Road
City/State/Zip: Belmont, CA 94002
Phone: 650-863-5006
Attn: David Yosso, CEO/CFO
Email: david@specplay.com
Copy to: c.olsen@specplay.com

24. General Provisions.

24.1 Contract Interpretation. Should any question arise regarding the meaning or import of any of the provisions of this Contract or written or oral instructions from City, the matter shall be referred to City’s Representative, whose decision shall be binding upon Contractor. Each party to this Contract has had an opportunity to review this Contract, and to consult with its respective legal counsel regarding the meaning of this Contract. Accordingly, Civil Code § 1654 will not apply to interpret any uncertainty in the meaning of this Contract.

24.2 Provisions Deemed Inserted. Every provision of law required to be inserted in the Contract is deemed to be inserted, and the Contract will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any

required provision was not inserted, or not correctly inserted, the Contract will be deemed amended accordingly.

24.3 Assignment and Delegation. This Contract will not be assigned or transferred in whole or in part, nor will any of the Contractor's duties be delegated, without the City's prior written consent. Any attempt to assign, transfer, or delegate this Contract, in whole or any part, without the City's prior written consent will be void and of no force or effect. Any consent by the City to one assignment, transfer, or delegation will not be deemed to be consent to any subsequent assignment, transfer, or delegation. This Contract is binding on Contractor's and City's lawful heirs, successors and permitted assigns.

24.4 Third Party Beneficiaries. There are no intended third party beneficiaries to this Contract.

24.5 Governing Law, Jurisdiction, and Venue. The interpretation, validity, and enforcement of this Contract will be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Contract will be filed and heard in a court of competent jurisdiction in the County of Napa. Contractor waives any right it may have pursuant to Code of Civil Procedure § 394 to file a motion to transfer any action arising from or relating to this Contract to a venue outside of Napa County, California.

24.6 Modification. This Contract may not be amended or modified orally. No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

24.7 Entire Contract . This Contract and the document(s) incorporated herein, including authorized amendments or change orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor concerning the subject matter hereof. This Contract supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Contract are complementary; what is called for in one is binding as if called for in all.

24.8 Severability. If any term of the Contract (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Contract will be construed as not containing that term, and the remainder of the Contract will remain in full force and effect; provided, however, this Section will not be applied to the extent that it would result in a frustration of the parties' intent under the Contract.

24.9 Signatures. The individuals executing this Contract represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Contract on behalf of the respective legal entities of the Contractor and the City. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporations Code § 313.

24.10 Counterparts. This Contract may be executed in counterparts, each of which shall constitute an original.

24.11 Successors. The Parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract.

24.12 Solicitation. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract. Further, Contractor warrants that it has not paid nor has it agreed to pay

any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City shall have the right to terminate this Contract without liability.

24.13 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project or other projects.

25. Title to Work; Contractors Waivers.

25.1 Upon the City's acceptance, the Work shall be the property of the City. The City shall have no obligation to display or maintain the Work for any particular time and the City reserves the right to reproduce, remove, relocate or destroy the Work at any time after Contractor's completion of the Services.

25.2 The City shall have the right to make photographs, drawings, or other two-dimensional reproductions of the Work without prior consent of the Contractor if used solely for non-commercial purposes. For the purposes of this Contract, the following are deemed to be reproductions for non-commercial purposes: reproduction in exhibition catalogues, books, slides, photographs, postcards, posters and calendars, and the City's website; in art magazines, art books, and art and news sections of newspapers; in general books and magazines not primarily devoted to art but of an educational, historical or critical nature; slides and film strips not intended for a mass audience; and television from stations operated for educational purposes or on programs for educational purposes from all stations.

25.3 The Contractor shall not reproduce the Work for any other client or project, indefinitely.

25.4 Without limitation of any other provision hereof, Contractor expressly agrees to waive any and all rights Contractor may have pursuant to title 17 U.S.C. Section 106A, (commonly known as the "Visual Artists Rights Act of 1990") as Contractor's rights under the Act apply, if at all, to the Work.

25.5 Without limitation of any other provision hereof, Contractor expressly agrees to waive any and all rights Contractor may have, including, without limitation, any moral or other rights, pursuant to the California Art Preservation Act, California Civil Code Section 987, and California Civil Code Section 989, to the extent that such provisions have any force or effect with respect to Contractor's rights to the Work.

[Signatures are on the following page.]

ATTACHMENT 4

The parties hereto have executed this Contract to be effective on the Effective Date set forth below.

CITY:

CITY OF NAPA, a California charter city

By: _____
Breyana Brandt, Parks and Recreation Services Director

Date: _____
("Effective Date")

COUNTERSIGNED:

Erika Leahy, City Auditor

APPROVED AS TO FORM:

Christopher J. Diaz, Interim City Attorney

CONTRACTOR: Yosso Group, Inc., a California corporation DBA Specified Play Equipment Co.
Business Name

s/ _____

Seal:

David Yosso, CEO/CFO

Date: _____

Contractor's California License Number(s) and Expiration Date(s)

Attachments:

- Exhibit A: Scope of Work
- Exhibit B: Contract Pricing
- Exhibit C: Bond Forms

Exhibit A
SCOPE OF WORK

SCOPE OF SERVICES. Contractor will perform the Work described in accordance with the terms of the Contract, including any and all attachments thereto.

- 1. Contractor shall fabricate the following equipment consistent with the plans and specifications attached hereto:

Equipment	Quantity	Description

- 2. Contractor shall fabricate and deliver the equipment specified above consistent with the terms of the Contract, including, without limitation, **Exhibit C, Fabrication & Delivery Terms.**
- 3. Contractor shall perform all Work necessary to completely construct and install the equipment specified above consistent with terms of this Contract and the plans and specifications attached to this **Exhibit A as Appendix 1**, including, without limitation:
 - a. Fabricating and delivering the new playground equipment and surfacing to be installed at the Project location;
 - b. Removing and hauling off existing playground equipment and surfacing to be replaced;
 - c. Performing layout and preparing site for installation that conforms with the Geotechnical Report;
 - d. Installing the equipment specified above at the Site consistent with the plans and specifications attached hereto as **Appendix 1**;
 - e. Providing and installing specified safety surfacing for compliance with all applicable safety requirements consistent with the plans and specifications attached hereto as **Appendix 1**;
 - f. Installing site drainage consistent with the plans and specifications attached hereto as **Appendix 1**;
 - g. Relocation of the existing 2-5 equipment; and
 - h. Replacing concrete surrounding the site perimeter to meet ADA requirements consistent with the plans and specifications attached hereto as **Appendix 1**.
- 4. Provide Certified Playground Safety Inspector (CPSI) certification once installation is complete.

Project Plan:

The plans and specifications are attached to this **Exhibit A as Appendix 1.**

Appendix 1 to Exhibit A
Plans and Specifications

[BEGINS ON THE FOLLOWING PAGE]

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**Exhibit B
CONTRACT PRICING FOR PLAYGROUND EQUIPMENT**

Contractor shall complete all Work for the Project in an amount that shall not exceed the Contract Price, as adjusted pursuant to the terms of the Contract.

Below is per-item price for the equipment installed:

Equipment	Quantity	Per-Unit Cost

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Exhibit C
FABRICATION & DELIVERY TERMS

1. Definitions.

A. “**Goods**” means the playground equipment that Contractor shall fabricate identified in **Exhibit A, Scope of Work** and the plans and specifications attached as **Appendix 1** thereto.

B. “**Delivery Date(s)**” shall be the same date shall be **[Insert Date]**.

2. Responsibility for Fabrication & Delivery

A. Contractor shall complete all Work necessary to fabricate the Goods. All Goods shall be as specified, to the extent applicable, in the plans and specifications.

B. Contractor will deliver all Goods fabricated to the Site, or to site selected by Contractor to store the Goods, no later than the Delivery Date. When the Contractor finishes fabricating the Goods, Contractor shall give notice to the City, including reasonable substantiation to demonstrate that the Goods are complete and delivered, and, if not stored at the Site, shall notify the City where Contractor is storing the Goods.

C. Contractor recognizes that the Goods will be incorporated and installed into the Project. Contractor acknowledges that it shall be responsible for storing the Goods prior to incorporating the Goods into the Work and shall be responsible for sequencing and delivering the Goods to the Project Site.

3. Materials and Workmanship.

No substitution will be made to the Goods, or any portion thereof, without City’s written approval. Any alteration without the approval of the City will be deemed to be defective material. All Goods fabricated by Contractor shall be fabricated in a good and workmanlike manner, free of defect, and in good operating order. Contractor shall comply with the standards of its profession in fabricating the terms

4. Inspections and Tests.

City shall have the right to inspect and/or test the Goods prior to acceptance. If upon inspection or testing the Goods or any portion thereof are found to be nonconforming, unsatisfactory, defective, of inferior quality or workmanship, or fail to meet any requirements of the Contract and plans and specifications, then without prejudice to any other rights or remedies, City may reject the Goods or exercise any of its rights in this Exhibit. The inspection, failure to make inspection, acceptance of goods, or payment for Goods shall not impair City’s right to reject nonconforming goods, irrespective of City’s failure to notify Contractor of a rejection of nonconforming Goods or revocation of acceptance thereof or to specify with particularity any defect in nonconforming Goods after rejection or acceptance thereof.

5. Warranty.

A. Any warranty(ies) and/or remedy(ies) hereunder shall be cumulative of any other warranty in the Contract.

B. Contractor warrants that the Goods will be of merchantable quality and free from defects in design, engineering, material, and workmanship for a period of two (2) years, or such longer period as provided by a manufacturer’s warranty or as agreed to by Contractor and City, from the date that Contractor completes the Project. Contractor further warrants that any fabrication

ATTACHMENT 4

or delivery services, provided in connection with the Goods will be performed in a professional and workmanlike manner and in accordance with the highest industry standards.

C. Contractor further warrants that all machinery, equipment, or process included in the Goods will meet the requirements of the Contract and plans and specifications, and shall be fit for the purpose intended. City's inspection, testing, approval, or acceptance of any such machinery, equipment, or process will not relieve Contractor of its obligations hereunder.

D. For any breach of the warranties contained hereunder, Contractor will, immediately after receiving notice from City, at the option of City, and at Contractor's own expense and without cost to City:

1. Repair the defective Goods;
2. Replace the defective Goods with conforming Goods, F.O.B. City's plant, office or other location of City where the Goods was originally performed or delivered; or
3. Repay to City the purchase price of the defective Goods.

If City selects repair or replacement, any defects will be remedied without cost to City, including but not limited to, the costs of removal, repair, and replacement of the defective Goods, and reinstallation of new Goods. All such defective Goods that is so remedied will be similarly warranted as stated above. In addition, Contractor will repair or replace other items of the Goods which may have been damaged by such defects or the repairing of the same, all at its own expense and without cost to City.

E. Contractor also warrants that the Goods are free and clear of all liens and encumbrances whatsoever, that Contractor has a good and marketable title to same, and that Contractor owns or has a valid license for all of the proprietary technology and intellectual property incorporated within the Goods. Contractor agrees to indemnify, defend, and hold City harmless against any and all third party claims resulting from the breach or inaccuracy of any of the foregoing warranties.

F. In the event of a breach by Contractor of its obligations hereunder, City will not be limited to the remedies set forth in this hereunder, but will have all the rights and remedies permitted by applicable law, including without limitation, all of the rights and remedies afforded to City under the California Commercial Code.

6. Prices.

Unless expressly provided otherwise, all prices and fees specified in **Exhibit B**, above, are firm and shall not be subject to change without the written approval of City. No extra charges of any kind will be allowed unless specifically agreed to in writing by City's authorized representative. Compensation for Fabrication Services shall include (i) all federal, state and local sales, use, excise, privilege, payroll, occupational and other taxes applicable to the Goods furnished to City hereunder; and (ii) all charges for packing, freight and transportation to destination.

7. Title and Risk of Loss.

Unless otherwise agreed, City will have title to, and risk of loss of, all completed and partially completed portions of the Goods upon delivery, as well as materials delivered to and stored on City property which are intended to become a part of the Goods. However, Contractor will be liable for any loss or damage to the Goods and/or the materials caused by Contractor or its subcontractors, their agents or employees, and Contractor will replace or repair said Goods or materials at its own

ATTACHMENT 4

cost to the complete satisfaction of City. Notwithstanding the foregoing, in the event that the City has paid Contractor for all or a portion of the Goods which remains in the possession of Contractor, then City shall have title to, and the right to take possession of, such Goods at any time following payment therefor. Risk of loss for any Goods which remains in the possession of Contractor shall remain with Contractor until such Goods has been delivered or City has taken possession thereof. Contractor will have risk of loss or damage to Contractor's property used in the construction of the Goods but which does not become a part of the Goods.

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Exhibit D
Certifications

[BEGINS ON THE FOLLOWING PAGE]

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PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/PublicWorks/PublicWorks.html> for additional information.

No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Contractor hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.¹

Name of Contractor: _____

DIR Registration Number: _____

DIR Registration Expiration: _____

Small Project Exemption: _____ Yes or _____ No

Unless Contractor is exempt pursuant to the small project exemption, Contractor further acknowledges:

- Contractor shall maintain a current DIR registration for the duration of the project.
- Contractor shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
- Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Name of Contractor _____

Signature _____

Name and Title _____

Dated _____

¹ If the Project is exempt from the contractor registration requirements pursuant to the small project exemption under Labor Code Sections 1725.5 and 1771.1, please mark "Yes" in response to "Small Project Exemption."

NON-COLLUSION DECLARATION

The undersigned declares:

I am the _____ of _____, the party making the foregoing Bid.

The Contract is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Contract is genuine and not collusive or sham. The Contractor has not directly or indirectly induced or solicited any other Contractor to put in a false or sham bid. The Contractor has not directly or indirectly colluded, conspired, connived, or agreed with any Contractor or anyone else to put in a sham bid, or to refrain from bidding. The Contractor has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Contract Price of the Contractor or any other Contractor, or to fix any overhead, profit, or cost element of the Contract Price, or of that of any other Contractor. All statements contained in the Contract are true. The Contractor has not, directly or indirectly, submitted his or her Contract Price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Contractor that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Contractor.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state].

Name of Contractor _____

Signature _____

Name _____

Title _____

FLEET COMPLIANCE CERTIFICATION

Contractor hereby acknowledges that they have reviewed the California Air Resources Board’s policies, rules and regulations and are familiar with the requirements of Title 13, California Code of Regulations, Division 3, Chapter 9, effective on January 1, 2024 (the “Regulation”). Contractor hereby certifies, subject to penalty for perjury, that the option checked below relating to the Contractor’s fleet, and/or that of their subcontractor(s) (“Fleet”) is true and correct:

- The Fleet is subject to the requirements of the Regulation, and the appropriate Certificate(s) of Reported Compliance have been attached hereto.
- The Fleet is exempt from the Regulation under section 2449.1(f)(2), and a signed description of the subject vehicles, and reasoning for exemption has been attached hereto.
- Contractor and/or their subcontractor is unable to procure R99 or R100 renewable diesel fuel as defined in the Regulation pursuant to section 2449.1(f)(3). Contractor shall keep detailed records describing the normal refueling methods, their attempts to procure renewable diesel fuel and proof that shows they were not able to procure renewable diesel (i.e. third party correspondence or vendor bids).
- The Fleet is exempt from the requirements of the Regulation pursuant to section 2449(i)(4) because this Project has been deemed an Emergency, as defined under section 2449(c)(18). Contractor shall only operate the exempted vehicles in the emergency situation and records of the exempted vehicles must be maintained, pursuant to section 2449(i)(4).
- The Fleet does not fall under the Regulation or are otherwise exempted and a detailed reasoning is attached hereto.

Name of Contractor: _____

Signature: _____

Name: _____

Title: _____

Date: _____

IRAN CONTRACT ACT CERTIFICATE
(Public Contract Code section 2200 et seq.)

As required by California Public Contract Code Section 2204, the Contractor certifies subject to penalty for perjury that the option checked below relating to the Contractor's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*) is true and correct:

- The Contractor is not:
 - (1) identified on the current list of person and entities engaged in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or
 - (2) a financial instruction that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.
- The Town has exempted the Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, the Town will be unable to obtain the goods and/or services to be provided pursuant to the Contract.
- The amount of the Contract payable to the Contractor for the Project does not exceed \$1,000,000.

Signature: _____

Printed Name: _____

Title: _____

Firm Name: _____

Date: _____

Note: In accordance with Public Contract Code Section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of \$250,000 or twice the Contract amount, termination of the Contract and/or ineligibility to bid on contracts for three years.

EXECUTIVE ORDER N-6-22 CERTIFICATION

Executive Order N-6-22 issued by Governor Gavin Newsom on March 4, 2022, directs all agencies and departments that are subject to the Governor’s authority to (a) terminate any contracts with any individuals or entities that are determined to be a target of economic sanctions against Russia and Russian entities and individuals; and (b) refrain from entering into any new contracts with such individuals or entities while the aforementioned sanctions are in effect.

Executive Order N-6-22 also requires that any contractor that: (1) currently has a contract with the Town funded through grant funds provided by the State of California; and/or (2) submits a bid or proposal or otherwise proposes to or enter into or renew a contract with the Town funded by State of California grant funds, certify that the person is not the target of any economic sanctions against Russia and Russian entities and individuals.

The Contractor hereby certifies, SUBJECT TO PENALTY FOR PERJURY, that a) the contractor is not a target of any economic sanctions against Russian and Russian entities and individuals as discussed in Executive Order N-6-22 and b) the person signing below is duly authorized to legally bind the Contractor. This certification is made under the laws of the State of California.

Signature: _____

Printed Name: _____

Title: _____

Firm Name: _____

Date: _____

Exhibit E
BOND FORMS

DRAFT

ATTACHMENT 4

7. **Effective Date; Execution.** This Bond is entered into and is effective on _____, 20__.

SURETY:

Business Name

s/ _____

Date

Name, Title

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

Business Name

s/ _____

Date

Name, Title

s/ _____

Date

Name, Title

APPROVED BY CITY:

s/ _____

Date

Breyana Brandt, Parks and Recreation Services Director

END OF PAYMENT BOND

Performance Bond

City of Napa ("City") and Landscape Structures, Inc. ("Contractor") have entered into a contract ("Contract") for work on the Park Playground and Amenity Improvement Project ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

- 1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee for an amount not less than the Contract Price of \$2,491,464 to ensure Contractor's faithful performance of its obligations under the Contract. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and Contractor.
- 2. **Surety's Obligations.** Surety's obligations are co-extensive with Contractor's obligations under the Contract. If Contractor fully performs its obligations under the Contract, including its warranty obligations under the Contract, and Contractor has timely provided a warranty bond as required under the Contract, Surety's obligations under this Bond will become null and void upon City's acceptance of the Project, excluding any exceptions to acceptance, if any. Otherwise, Surety's obligations will remain in full force and effect until expiration of the one-year warranty period under the Contract.
- 3. **Waiver.** Surety waives any requirement to be notified of and further consents to any alterations to the Contract made under the applicable provisions of the Contract documents, including changes to the scope of Work or extensions of time for performance of Work under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845.
- 4. **Application of Contract Balance.** Upon making a demand on this Bond for completion of the Work prior to acceptance of the Project, City will make the Contract Balance available to Surety for completion of the Work under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by City to Contractor as the Contract Price minus amounts already paid to Contractor, and minus any liquidated damages, credits, or backcharges to which City is entitled under the terms of the Contract.
- 5. **Contractor Default.** Upon written notification from City that Contractor is in default under the Contract, time being of the essence, Surety must act within seven calendar days of receipt of the notice to remedy the default through one of the following courses of action:
 - 5.1 Arrange for completion of the Work under the Contract by Contractor, with City's consent, but only if Contractor is in default solely due to its financial inability to complete the Work;
 - 5.2 Arrange for completion of the Work under the Contract by a qualified contractor acceptable to City, and secured by performance and payment bonds issued by an admitted surety as required by the Contract documents, at Surety's expense; or
 - 5.3 Waive its right to complete the Work under the Contract and reimburse City the amount of City's costs to have the remaining services completed.
- 6. **Surety Default.** If Surety defaults on its obligations under the Bond, City will be entitled to recover all costs it incurs due to Surety's default, including legal, design professional, or delay costs.
- 7. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and sent to Surety as follows:

Attn: _____

ATTACHMENT 4

Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____

- 8. **Law and Venue.** This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Superior Court of Napa County, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.
- 9. **Effective Date; Execution.** This Bond is entered into and effective on _____, 20____.

SURETY:

Business Name

s/ _____ Date _____

Name, Title

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

Business Name

s/ _____ Date _____

Name, Title

s/ _____ Date _____

Breyana Brandt, Parks and Recreation Services Director

END OF PERFORMANCE BOND

Warranty Bond

City of Napa, a California charter city ("City"), and Landscape Structures, Inc. ("Contractor") have entered into a contract, dated _____, 20__ ("Contract") for work on the Park Playground and Amenity Improvement Project ("Project"). The Contract is incorporated by reference into this Warranty Bond ("Bond").

- 1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in the maximum amount of 15% of the final Contract Price, unless otherwise specified in the Contract.
- 2. **Warranty Period.** The Contract requires Contractor to guarantee its work and that of its subcontractors on the Project, against defects in materials or workmanship which are discovered during the one-year period commencing with City's acceptance of the Project ("Warranty Period").
- 3. **Surety's Obligations.** If Contractor faithfully carries out and performs its guarantee under the Contract, and, on due notice from City, repairs and remedies, at its sole expense, any and all defects in materials and workmanship in the Project which are discovered during the Warranty Period, or if Contractor promptly reimburses City for all loss and damage that City sustains because of Contractor's failure to makes such repairs in accordance with the Contract requirements, then Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
- 4. **Waiver.** Surety waives the provisions of Civil Code §§ 2819 and 2845.
- 5. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and sent to Surety as follows:

Attn: _____
 Address: _____
 City/State/Zip: _____
 Phone: _____
 Fax: _____
 Email: _____

- 6. **Law and Venue.** This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Napa County Superior Court, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.

[Signatures are on the following page.]

ATTACHMENT 4

7. **Effective Date; Execution.** This Bond is entered into and is effective on _____,
20____.

SURETY:

Business Name

s/ _____

Date

Name, Title

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

Business Name

s/ _____

Date

Name, Title

APPROVED BY CITY:

s/ _____

Date

Breyana Brandt, Parks and Recreation Services Director

END OF WARRANTY BOND