

**DESTINATION PLAYGROUND AT DESERET PEAK COMPLEX
GREAT WESTERN INSTALLATIONS, INC.**

AGREEMENT dated this 19th day of September, 2023, by and between Tooele County, a political subdivision of the State of Utah ("Owner"), and Great Western Installations, Inc. ("Contractor").

The parties hereby mutually agree as follows:

1. Contractor shall: (a) furnish and install all playground components, materials and labor identified in Contractor's bid documents (plan views, pricing, renderings and technical submission); (b) furnish and deliver all playground components, equipment and materials not specifically identified as to be furnished by Owner; and (c) do and perform all other tasks required by Contractor's bid documents.
2. Contractor shall obtain all necessary permits and licenses at Contractor's expense.
3. As payment in full, County agrees to pay to Contractor no more than \$1,136,049.50 (\$818,564.15 for playground components and materials, and \$317,485.35 for surfacing option #2) after completion and upon acceptance by County. The parties understand that Owner's current budget for this project is \$900,000, and that unless additional funds are made available, Owner must and will select certain playground components and/or materials to delete from the playground proposed by Contractor. Such deletions will be at Owner's discretion, after consultation with Contractor, and shall not be subject to financial liability or penalty of any kind.
4. Contractor covenants and agrees that all playground components, materials and labor shall be manufactured, provided and installed in the best and most workmanlike manner and in strict conformity with Contractor's bid documents. Contractor's bid documents are hereby made a part of this Agreement as though they had been set forth herein.
5. The playground components, materials, and installation shall carry and be subject to the warranties set forth in Contractor's technical submission.
6. Contractor shall order the manufacture of the playground components upon execution of the Agreement.
7. Contractor must complete all work on or before April 1, 2024. Time is of the essence. The parties may agree to extend the completion deadline if severe weather during the 2023-24 winter season justifies such an extension. Delay caused by Contractor's lack of timely completion may result in significant cost to County. Therefore, as liquidated damages, County may deduct from the contract price up to \$400 per day for each day Contractor exceeds the work completion deadline.

8. Neither party to this Agreement shall be held responsible for delay or default caused by fire, riot, acts of God, war or pandemic beyond that party's reasonable control.

9. Commencing immediately and continuing until completion, Contractor shall communicate with County Director of Parks & Recreation Corey Bullock at least once each week to discuss percentage of completion, expected completion date, impediments to timely completion, etc.

10. Contractor and County shall complete a final punch list, and Contractor shall complete all items on the punch list within 14 days.

11. Contractor shall indemnify and hold harmless County and its officers and employees from and against all claims arising out of or related to Contractor's obligations pursuant to this Agreement.

12. Except as provided in paragraph 3, additional work and deviations from the project plans and specifications shall require written change orders which must be approved in advance by both parties.

13. Except as provided in paragraph 3, this Agreement may only be amended, modified, or supplemented by written amendment signed by the parties.

14. This Agreement, including Contractor's bid documents, constitutes the entire agreement between the parties. All other agreements, promises and representations with respect to the subjects of this Agreement, other than those contained herein, are expressly revoked, as it has been the intention of the parties to provide for a complete integration within the provisions of this document.

15. The unenforceability, invalidity or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

16. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, and their respective legal representatives. However, neither party may assign its rights or obligations under this Agreement without the express written consent of the other party, which consent shall not be unreasonably withheld.

17. In the event of default by either party hereto, the defaulting party shall pay all costs and expenses of the non-defaulting party, including a reasonable attorney's fee, which may be incurred by the non-defaulting party in enforcing its rights and remedies resulting from such default.

18. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

19. This Agreement shall be interpreted and enforced according to the laws of the State of Utah.

20. Contractor is not currently engaged in a boycott of the State of Israel and will not engage in a boycott of the State of Israel for the duration of this Agreement. Contractor is not currently engaged in a boycott action targeting a company that: (a) engages in the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, mining, or agriculture; (b) engages in, facilitates, or supports the manufacture, distribution, sale, or use of firearms; (c) does not meet or commit to meet environmental standards, including standards for eliminating, reducing, offsetting, or disclosing greenhouse gas-emissions, beyond applicable state and federal law requirements; or (d) does not facilitate or commit to facilitate access to abortion or sex characteristic surgical procedures. Contractor shall notify County in writing if Contractor begins to engage in such a boycott and acknowledges that such notice may be grounds for termination of this Agreement.

TOOELE COUNTY:

GREAT WESTERN INSTALLATIONS, INC.:


James A. Welch
Tooele County Manager


Lewis L. Painter
Vice-President

APPROVED AS TO FORM:


Nathan Harris
Deputy County Attorney