

RESOLUTION NO. 2502

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE A GOODS AND SERVICES CONTRACT WITH COLUMBIA CASCADE COMPANY FOR PLAYGROUND EQUIPMENT FOR MURASE PLAZA IN MEMORIAL PARK, PARKS AND RECREATION PROJECT #3001

WHEREAS, the City has budgeted funds to add some new playground equipment to Murase Plaza in Memorial Park; and

WHEREAS, after due diligence, the City's Parks and Recreation Director determined that only one manufacturer had the type of playground equipment desired, based on both aesthetics and safety; and

WHEREAS, Wilsonville Code allows for an exemption from a formal solicitation procedure on those rare occasions where the City Manager determines that a special procurement from a sole source is in the best public interest and does not hinder the City's overall competitive contracting procedures; and

WHEREAS, the City Manager and the City Parks and Recreation Director have recommended a special sole source procurement in this circumstance for the reasons set forth in the staff report submitted to the City Council and made part of the record of this hearing, including that the selection is unlikely to encourage favoritism because the manufacturer is local and selling directly to the City; substantial cost savings will be achieved; and the equipment, while best suiting the design of Murase Plaza, is also the only available equipment containing safety features deemed necessary by the City's Parks and Recreation Director; and

WHEREAS, City staff have determined that, based on the foregoing, Columbia Cascade Company has submitted the most suitable proposal, at a fair and competitive fee, for goods and services.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. Based on the testimony, exhibits and reports, and the above recitals before the City Council, the City Council finds and determines:

- 1.1 The procurement process for the Project duly followed Oregon Public Contracting and City of Wilsonville Contracting Rules in making a selection that is not likely to encourage favoritism.
- 1.2 There is a reasonable expectation of substantial cost savings for the City.
- 1.3 The procurement promotes the public interest in a way that could not be realized by complying with normal procurement procedures.
2. City Council authorizes the City Manager to execute the Goods and Services Contract, in the form attached hereto as **Exhibit A**.
3. This Resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 1st day of December, 2014, and filed with the Wilsonville City Recorder this date/

TIM KNAPP, MAYOR

ATTEST:

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Goddard	Yes
Councilor Fitzgerald	Yes
Councilor Stevens	Yes

Attachments:

Exhibit A: Goods and Services Contract

**CITY OF WILSONVILLE
GOODS AND SERVICES CONTRACT**

This Goods and Services Contract (“Contract”) is made and entered into on this ____ day of _____, 2014 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Columbia Cascade Company**, an Oregon corporation (hereinafter referred to as “Contractor”).

RECITALS

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

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

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

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

AGREEMENT

Section 1. Scope of Work

Contractor will manufacture and supply the new playground equipment (“Equipment”) described on the Scope of Work attached hereto as **Exhibit A** and incorporated by reference herein. Contractor will deliver and oversee the installation of said Equipment in the Murase Plaza area of Memorial Park in Wilsonville, Oregon, and perform the services necessary therefor, as more particularly described on the Scope of Work for the Murase Plaza Playground Renovation Project (“Project”).

Section 2. Term

The term of this Contract shall be from the Effective Date until all work required to be performed hereunder (“Work”) is completed and accepted, unless earlier terminated in accordance herewith. Except in the event of an extension of time agreed to, in writing, by the City, all Work is expected to be completed by April 30, 2015.

Section 3. Contract Sum/Project Scope

3.1. The City agrees to pay Contractor the all-inclusive fixed amount of TWO HUNDRED FOUR THOUSAND SIX HUNDRED TWENTY-FIVE DOLLARS (\$204,625) for all Equipment, ground cover, delivery cost, loading and unloading, and labor and materials for

full installation and warranties of the Project (“Contract Sum”). Any compensation in excess of the Contract Sum will require express written agreement between the City and Contractor. Contractor’s Contract Sum is all inclusive and includes, but is not limited to, all work-related expenses, expenses, wages plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits, and all other contributions and benefits. The City is responsible for site preparation.

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

3.3. Before payment, Contractor will need to provide proof that all subcontractors and suppliers have been paid in full or may direct the City to issue joint payment to Contractor and the approved subcontractors set forth in **Section 5**.

Section 4. Project Managers

The City’s Project Manager is Stan Sherer. Contractor’s Project Manager is Steve Kirn.

Section 5. Subcontractors and Assignments

Contractor intends to subcontract with GK Morgan Construction for installation of the Equipment and with Rexius for the supply and installation of Fibrex wood chips ground cover. Other than the two subcontractors specified in this Section, Contractor shall not subcontract with others for any of the Work prescribed herein nor assign any of Contractor’s rights acquired hereunder without obtaining prior written approval from the City, which approval may be granted or denied in the City’s sole discretion. Any attempted assignment of this Contract without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Contractor shall not be subject to additional reimbursement by the City. Contractor will not be paid until proof of payment of subcontractors is received or subcontractors sign a full waiver lien or lien release form.

Section 6. Contractor Is Independent Contractor

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

Contractor's Work so such Work meets the requirements of the Project. Contractor hereby represents that no subcontractors will be used on the Project.

Section 7. Contractor Responsibilities

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

7.2. Contractor shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Contractor's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions.

7.3. Contractor shall make prompt payment for any claims for labor, materials, or services furnished to Contractor by any person in connection with this Contract, as such claims become due. Contractor shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Contractor. If Contractor fails, neglects, or refuses to make prompt payment of any such claim, the City may pay such claim to the subcontractor furnishing the labor, materials, or services, and offset the amount of the payment against funds due, or to become due, to Contractor under this Contract. The City may also recover any such amounts directly from Contractor.

7.4. Contractor must comply with all applicable Oregon and federal wage and hour laws, including BOLI wage requirements. Contractor shall make all required workers compensation and medical care payments on time. Contractor shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Contractor shall also be fully responsible for payment of salaries, benefits, taxes, and all other charges due on account of any employees. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from Contractor or subcontractor incurred in the performance of this Contract. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of subcontractors or employees shall be Contractor's responsibility. Contractor shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses. Unless otherwise expressly set forth in the Contract Documents as a reimbursable expense item, specific costs associated with items set forth in this subsection shall be deemed as fully and conclusively included in the rate upon which Contractor's Contract Sum is based.

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

7.6. Contractor certifies that Contractor has not discriminated against minority, women, or small business enterprises in obtaining any subcontract.

7.7. Pursuant with ORS 279C.505(2), by execution of this Contract, Contractor agrees to have an employee drug testing program in place at the time of executing the Contract, acknowledges that such a program will be maintained throughout the Contract period, including any extensions, and shall demonstrate to the City that such drug testing program is in place. The failure of Contractor to have, or to maintain, such a drug-testing program is grounds for immediate termination of the Contract. Contractor shall require each subcontractor providing labor for the Project to also comply with this drug testing program requirement.

7.8. Contractor agrees that the City shall not be liable, either directly or indirectly, in any dispute arising out of the substance or procedure of Contractor's drug testing program. Nothing in this drug testing provision shall be construed as requiring Contractor to violate any legal, including constitutional, rights of any employee, including but not limited to selection of which employees to test and the manner of such testing. The City shall not be liable for Contractor's negligence in establishing or implementing, or failure to establish or implement, a drug testing policy or for any damage or injury caused by Contractor's employees acting under the influence of drugs while performing Work covered by the Contract. These are Contractor's sole responsibilities, and nothing in this provision is intended to create any third party beneficiary rights against the City.

7.9. Contractor shall make payment promptly, as due, to all parties supplying to such Contractor labor or material for the prosecution of the Work provided for in the Contract, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.

7.10. By execution of this Contract, as required by ORS 305.385(6), Contractor certifies under penalty of perjury that to the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4).

7.11. Contractor agrees that if Contractor or a subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with this Contract within thirty (30) days after receiving payment from the contracting agency or a contractor, Contractor or the subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten (10) day period within which payment is due under ORS 279C.580(3)(a) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due shall be calculated in accordance with ORS 279C.515(2). The amount of interest may not be waived.

7.12. Contractor agrees that if Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

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

7.14. Contractor and all subcontractors shall comply with the provisions of ORS 279C.540 pertaining to maximum hours, holidays, and overtime. With certain exceptions listed below, Contractor shall not require or permit any person to work more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in case of necessity, emergency, or where public policy requires it, and in such cases the person shall be paid at least time and a half for:

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

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

7.14.3. All Work performed on the days specified in ORS 279C.540(1)(b) for public improvement contracts.

7.15. Contractor and all subcontractors shall comply with the provisions of ORS 279C.545 pertaining to time limitation on claims for overtime and requirements for posting circulars containing said provisions.

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

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

7.18. Contractor, its subcontractors, and all employers working under the Contract are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017 and provide the required workers compensation coverage, unless otherwise exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

7.19. In the performance of this Contract, Contractor shall comply with all applicable federal, state, and local laws, municipal codes, regulations, rules, and ordinances, including but not limited to those dealing with public contracts (ORS Chapter 279C) and with the prevention of environmental pollution and the preservation of natural resources (and avoidance of natural resource damages) in the performance of the Contract, including but not limited to ORS 279C.525. To the extent that known environmental and natural resource risks are specifically noted, shown, or specified in the Contract Documents or on the construction drawings, such risks are allocated to Contractor pursuant with ORS 279C.525(8)(a). If new or amended statutes, ordinances, rules, or regulations are adopted, or Contractor encounters a condition not referred to in this Contract, not caused by Contractor, and that was not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws, codes, or regulations dealing with the preservation of the environment, both the City and Contractor shall have all the rights and obligations set forth in ORS 279C.525.

7.20. Contractor shall be liable for any fine imposed against Contractor, the City or the 'Project' as a result of a violation of any laws or permitting requirements by Contractor or any of its subcontractors or their sub-subcontractors or any suppliers.

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

Section 8. Subcontractor Requirements

8.1. Contractor's relations with subcontractors shall comply with ORS 279C.580. Pursuant with ORS 279C.580(3), each subcontract for material or services that Contractor enters

into with a subcontractor, including a material supplier, for the purpose of performing a construction contract, shall include a payment clause that obligates Contractor to pay the subcontractor for satisfactory performance under the subcontract within ten (10) days out of such amounts as are paid to Contractor by the contracting agency under the public improvement contract.

8.2. Contractor shall certify that all subcontractors, as described in ORS 701.005(2), will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 or 701.026, respectively, before the subcontractors commence Work under the Contract.

8.3. In no event shall any subcontract be awarded to any person or entity debarred, suspended, or disqualified from federal, state, or municipal contracting.

Section 9. Indemnity and Insurance

9.1. Contractor acknowledges responsibility for liability arising out of the performance of this Contract, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Contractor's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Contract, or from Contractor's failure to perform its responsibilities as set forth in this Contract. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other Work performed, prepared, or submitted by Contractor shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Contractor of its responsibility to perform in full conformity with the City's requirements, as set forth in this Contract, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Contractor's negligent performance of this Contract, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 9.2**. Contractor shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Contractor.

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

9.3. Contractor must maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or work hereunder. The amount of insurance

carried is in no way a limitation on Contractor's liability hereunder. The policy or policies of insurance maintained by Contractor shall provide at least the following minimum limits and coverages at all times during performance of this Contract:

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

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

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

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

9.3.5. Additional Insured & Termination Endorsements. Additional Insured coverage under Contractor's Commercial General Liability, Pollution Liability and Excess Liability Policy(ies), as applicable, will be provided by endorsement. Additional insured coverage shall be for both on-going operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation

endorsement via ISO form CG 2404 or its equivalent shall be provided. The following is included as additional insured: The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers. An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder.

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

Section 10. Warranty

Contractor hereby agrees that Contractor will timely and thoroughly perform all Work. Any required warranty work will be performed at the installation location unless the work cannot reasonably be performed on site. Contractor will be responsible for transporting the equipment in need of warranty work from Wilsonville and back to Wilsonville. Contractor agrees to provide full warranty for all labor, materials, and Equipment for the warranty period set forth below.

In addition to, and not in lieu of, any other warranties provided by various manufacturers and suppliers, Contractor fully warrants all Work and Equipment for a period of five (5) years from the date of Final Acceptance of the Work and Equipment and shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City's Project Manager and at no cost to the City, any and all defects, breaks, or failures of the Work or Equipment occurring within five (5) years following the date of completion due to faulty or inadequate materials or workmanship. Repair of damage or disturbances to other improvements under, within, or adjacent to the Equipment/Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of Contractor in performing his/her duties and obligations under this Contract, is also covered by the warranty when such defects or damage occur within the warranty period. The five (5) year warranty period shall, with relation to such required repair, be extended five (5) years from the date of completion of such repair.

Section 11. Early Termination; Default

11.1. This Contract may be terminated prior to the expiration of the agreed upon terms by the City if Contractor breaches this Contract and fails to immediately cure the breach within ten (10) days of receipt of written notice of the breach from the City.

11.2. If the City terminates this Contract in whole or in part, due to default or failure of Contractor to perform Work in accordance with the Contract, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Contractor shall be liable for all costs and damages incurred by the City as a result of the default by Contractor, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Contract. This Contract shall be in full force to the extent not terminated by written notice from the City to Contractor. In the event of a default, the City will provide Contractor with written notice of the default and a period of one (1) days to cure the default. If Contractor notifies the City that it cannot, in good faith, do so within the one (1) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, or the City may elect to terminate this Contract and seek remedies for the default, as provided above.

Section 12. Contract Modification; Change Orders

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

Section 13. Notices

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

To City: City of Wilsonville
 Attn: Stan Sherer
 29799 SW Town Center Loop East
 Wilsonville, OR 97070

To Contractor: Columbia Cascade Company
 Attn: Steve Kirn
 1300 SW 6th Avenue, Suite 310
 Portland, OR 97201

Section 14. Miscellaneous Provisions

14.1. Integration. This Contract, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Contract shall control.

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

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

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

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

14.6. Jurisdiction. Venue for any dispute will be in Clackamas County Circuit Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONTRACTOR:

CITY:

COLUMBIA CASCADE COMPANY

CITY OF WILSONVILLE

By: _____

By: _____

(Print Name)

(Print Name)

As Its: _____

As Its: _____

Employer I.D. No. _____

APPROVED AS TO FORM:

ATTESTED TO:

Barbara A. Jacobson, Assistant City Attorney
City of Wilsonville, Oregon

Sandra C. King, MMC, City Recorder
City of Wilsonville, Oregon

k:\doc\murase playground\gsk murase playground equip~columbia cascade



Columbia Cascade Company

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 Fax: 503/223-4530
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TimberForm Replay Model No. 3836-01-RP-M
 Cattle Ranch
 Memorial Park
 Wilsonville, OR

Dwg No. P-13188-X-AUX
 Drawn by: TB Rev. by:
 Date: 01-08-14 Date:
 Scale: None
 Sheet: 2 of 4



Columbia Cascade Company

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 U.S.A.

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 Fax: 503/223-4530
 E-mail: HQ@timberform.com

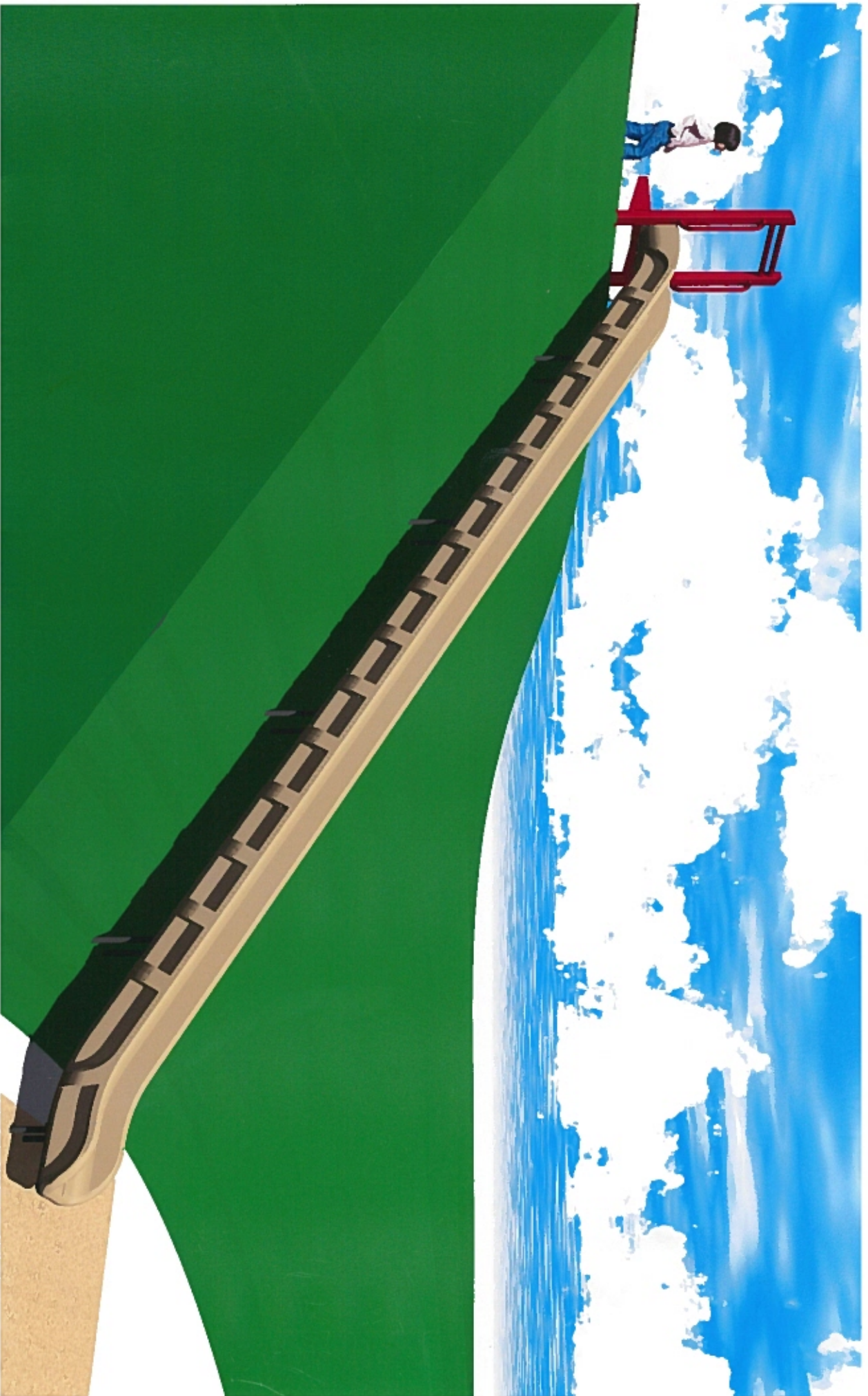
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TimberForm Replay Model No. 3817-01-RR-M
 Barn with Silo and Corral
 Memorial Park
 Wilsonville, OR

Dwg No. P-13188-X-AUX
 Drawn by: TB Rev. by:
 Date: 01-09-14 Date: Scale: None
 Sheet: 1 of 4



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TimberForm Model No. 1650-144-EMB
Embankment Slide Chute
Memorial Park
Wilsonville, OR

Dwg No. P-13188-X-AUX Scale: None
Drawn by: TB Rev. by: Date: 01-08-14 Sheet: 3 of 4