



**TOWN OF CASTLE ROCK
EQUIPMENT AND SERVICES ACQUISITION AGREEMENT
(Mitchell Gulch Park Renovation Playground Equipment)**

DATE: _____

PARTIES: **TOWN OF CASTLE ROCK**, a Colorado municipal corporation, 100 N. Wilcox Street, Castle Rock, Colorado 80104 (“Town”).

LANDSCAPE STRUCTURES, INC., a Minnesota corporation, 601 7th Street South, Delano, Minnesota 55328 (“Contractor”).

RECITALS:

- A. The Town wishes to engage Contractor to provide the services more fully described in the following Agreement and Exhibits.

TERMS:

Section 1. Scope of Services. Contractor shall perform all of the services and provide all materials as set forth on *Exhibit 1* (“Work”). Contractor shall complete the Work consistent with standards and practices of the profession.

Section 2. Total Obligation. The Town’s total obligation to Contractor under this Agreement for the Work shall not exceed \$357,023.52, unless authorized in writing by the Town.

Section 3. Payment. Contractor shall invoice Town upon completion of the Work. Town may withhold payment in whole, or in part for the Work found by the Town to be defective, untimely, unsatisfactory, or otherwise not conforming to this Agreement, not in conformance with all applicable federal, state, and local laws, ordinances, rules and regulations, or if Contractor is in default of Section 6, below. Town shall remit payment, whether whole or in part within 15 days receipt of such invoice.

Section 4. Completion. Contractor understands time is of the essence in this Agreement. Contractor shall commence the Work upon execution of this Agreement and complete the Work and deliver the equipment not later than June 15, 2023. Contractor shall devote adequate resources to assure timely completion of the Work in accordance with the standards specified in this Agreement. Contractor shall perform the Work under this Agreement using a standard of care, skill and diligence ordinarily used by reputable professionals performing under circumstances similar to those required by this Agreement.

Town shall have the right to terminate this Agreement at any time with 10 days written notice to Contractor. The Town’s only obligation in the event of termination shall be payment of fees and expenses incurred up to and including the effective date of termination.



Section 5. Subcontractors. Contractor may utilize subcontractors to assist with specialized works as necessary to complete the Work. Contractor will submit any proposed subcontractor and the description of subcontractor services to the Town for its prior approval.

Section 6. Inspection and Warranty. Town reserves the right to inspect the Work provided under this Agreement at all reasonable times and places during the term of this Agreement. Alternatively, the Town may refuse the Work and cancel all or any part of this Agreement if Contractor fails to deliver all or any part of the Work in accordance with the terms and conditions of this Agreement. Failure by the Town to inspect and test the Work shall not relieve Contractor of such responsibility. Any acceptance by the Town shall not be deemed a waiver or settlement of any defect or nonconformity in such Work. If Town elects to accept nonconforming or defective Work, Town, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate Town for the nonconformity or defect.

Contractor expressly warrants that all materials and/or equipment furnished under this Agreement shall be free from defects in materials or workmanship, are installed properly and in accordance with the manufacturer recommendations or other industry standards, and will function in a failure-free manner for a period of one (1) year from the date of delivery or installation. Contractor, shall, at its option, repair or replace any material and/or equipment that fail to satisfy this warranty during the warranty period. Additionally, Contractor agrees to assign to the Town all written manufacturer warranties relating to the supplies and to deliver such written warranties to the Town.

Section 7. Risk of Loss. With respect to any equipment provided under this Agreement, risk of loss shall not pass to the Town until such equipment has been received and accepted by the Town, pursuant to Section 6, above, at the destination specified by the Town. Contractor assumes full responsibility for packing, crating, marking, transporting, and liability for loss or damage in transit, notwithstanding any agreement by the Town to pay freight, express or other transportation charges.

Section 8. Annual Appropriation. The continuance of this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the Agreement by the Town. If the Town fails to appropriate sufficient monies to provide for the continuance of the Agreement, the Agreement shall terminate on the final day preceding the date of the beginning of the first fiscal year for which funds are not appropriated. The Town's only obligation in the event of termination shall be payment of fees and expenses incurred up to and including the effective date of termination.

Section 9. Assignment. This Agreement shall not be assigned by Contractor without the written consent of the Town.

Section 10. Notice. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the first page of this Agreement, or at such other



address as has been previously furnished in writing to the other party or parties. Such notice shall be deemed given when deposited in the United States mail.

Section 11. Insurance. Contractor agrees to procure and maintain, at its own cost, the following policy or policies of insurance. Contractor shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

A. Contractor shall procure and maintain, and shall cause each subcontractor of the Contractor to procure and maintain a policy with the minimum insurance coverage listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the Town. All coverage shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Workers Compensation insurance to cover obligations imposed by the Workers Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employer's Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease-each employee.

2. Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall contain a severability of interests provision.

B. The policies required above, except Workers' Compensation insurance and Employers' Liability insurance shall be endorsed to include the Town, its officers and employees, as an additional insured. Every policy required above, except Workers' Compensation insurance, if applicable, shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provided by Consultant. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Consultant shall be solely responsible for any deductible losses under each of the policies required above.

C. Certificates of insurance shall be completed by Contractor's insurance agent and submitted at the time of execution of this Agreement as *Exhibit 2* as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect, and shall be subject to review and approval by the Town. Each certificate shall identify the Project and shall provide that coverage afforded under the policies shall not be cancelled,



terminated or materially changed until at least 30 days prior written notice has been given to the Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

D. Failure on the part of Contractor to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which at the Town's discretion may procure or renew any such policy or any extended connection therewith, and all monies so paid by the Town shall be repaid by Contractor to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to Contractor from the Town.

Section 12. Colorado Governmental Immunity Act. The parties understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this contract, the monetary limitations (presently \$424,000 per person, \$1,195,000 for two or more persons, per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S., as from time to time amended, or otherwise available to Town, its officers, or its employees.

Section 13. Indemnification. Contractor expressly agrees to indemnify and hold harmless Town or any of its officers or employees from any and all claims, damages, liability, or court awards including attorney's fees that are or may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including, but not limited to, any person, firm, partnership, or corporation, to the extent caused by the negligent acts, errors or omissions of Contractor or any of their employees or agents in performing work pursuant to this Agreement. In the event that any such suit or action is brought against Town, Town will give notice within ten (10) days thereof to Contractor.

Section 14. Delays. Any delays in or failure of performance by any party of his or its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party.

Section 15. Additional Documents. The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

Section 16. Entire Agreement. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

Section 17. Time of the Essence. Time is of the essence. If any payment or any other condition, obligation, or duty is not timely made, tendered or performed by either party,



then this Agreement, at the option of the party who is not in default, may be terminated by the non-defaulting party, in which case, the non-defaulting party may recover such damages as may be proper.

Section 18. Default and Remedies. In the event either party should default in performance of its obligations under this agreement, and such default shall remain uncured for more than 10 days after notice of default is given to the defaulting party, the non-defaulting party shall be entitled to pursue any and all legal remedies and recover its reasonable attorney's fees and costs in such legal action. In addition, no Party will be entitled to lost profits, economic damages, or actual, direct, incidental, consequential, punitive or exemplary damages in the event of a default.

Section 19. Waiver. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

Section 20. Governing Law. This Agreement shall be governed by the laws of the State of Colorado in the Douglas County District Court.

Section 21. Independent Contractor. Contractor has completed the Affidavit of Independent Contractor Status, attached as *Exhibit 3*, and submitted same at the time of execution of this Agreement. In addition to the Affidavit, Contractor and the Town hereby represent that Contractor is an independent contractor for all purposes hereunder. Contractor represents and warrants that they are free from the Town's direction and control in the performance of their work or services and that they have an independent business doing the specific type of work or services which are the subject of this Agreement. More specifically, Contractor represents and warrants that the Town does not control what work or services they will perform or the manner in which such work or services will be performed. As such, Contractor is not covered by any worker's compensation insurance or any other insurance maintained by Town except as would apply to members of the general public. Contractor shall not create any indebtedness on behalf of the Town.

Section 22. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Town and Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the parties that any person other than Town or Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

Section 23. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed to constitute one and the same instrument. Each of the Parties hereto shall be entitled to rely upon a counterpart of the instrument executed by the other Party and sent by electronic mail.



ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

Jeff Brauer, Director Parks & Recreation

CONTRACTOR:

LANDSCAPE STRUCTURES, INC.

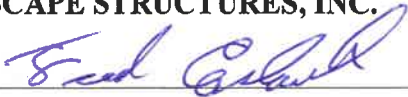
By: 
Fred Caslavka
Its: CFO



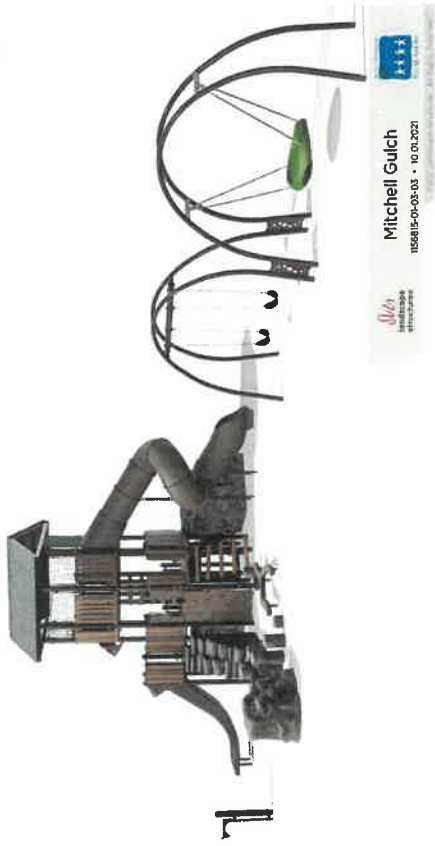
EXHIBIT 1

SCOPE OF WORK AND FEE SCHEDULE

Contractor shall manufacture and ship the following playground equipment, as more specifically noted in *Exhibit 1-A*. The Town will handle installation independently.

QTY	ITEM NO.	DESCRIPTION	UNIT WT	UNIT PRICE	WEIGHT	EXTENDED AMT
1	1158815-01-03	Custom PlayBooster Treehouse Tower for Ages 5-12		225,705.00	-	\$ 225,705.00
1	1158815-01-03	Custom PlayBooster Treehouse Structure for Ages 2-5		53,930.00		\$ 53,930.00
1	CP007253	Custom Double Oodle Swing Frame w/ 1 Disc Seat and 2 Belt Seats		13,110.00	-	\$ 13,110.00
1	CP006233	Custom Oodle Swing Frame w/ 2 Tot Seats		8,275.00		\$ 8,275.00
1	173594A	Log Crawl Tunnel		7,020.00		\$ 7,020.00
					Total Weight	38,571
					SUBTOTAL MATERIAL	\$ 354,040.50
					SOURCEWELL DISCOUNT	\$ (29,323.96)
					ADMIN FEE	\$ 6,514.51
					INSTALLATION	Not Included
					FREIGHT	\$ 24,783.47
					SALES TAX	Exempt
					TOTAL	\$ 357,023.52

EXHIBIT 1-A



1 PLAY EQUIPMENT-INTERMEDIATE

MANUFACTURE, LANDSCAPE STRUCTURES
 CONTACT: EVAN BAKER AT ROCKY MOUNTAIN RECREATION (303) 783-1432
 NO SUBSTITUTES

NOT TO SCALE



2 PLAY EQUIPMENT-PRIMARY

MANUFACTURE, LANDSCAPE STRUCTURES
 CONTACT: EVAN BAKER AT ROCKY MOUNTAIN RECREATION (303) 783-1432
 NO SUBSTITUTES

NOT TO SCALE

DISH DESIGN
 3065 Inspecity
 Castle Rock, CO 80109
 www.dishdesign.com

RELEASE OF DOCUMENT
 I, the undersigned, certify that the above and all other drawings, specifications, and reports prepared by me or under my direct supervision and control are true and correct and that I am a duly licensed professional engineer in the State of Colorado.

MITCHELL GULCH PARK
 TOWN OF CASTLE ROCK, COLORADO
 CONSTRUCTION DOCUMENTS
 CASTLE ROCK, COLORADO 80104

PROJECT NUMBER: 20200101
 DATE: 08.24.2022
 DESIGNED BY: JAV
 DRAWN BY: JAV
 CHECKED BY: JAV

REVISIONS:
 REVISION NO. DATE
 1. LANDSCAPE ARCHITECT
 2. LICENSED LANDSCAPE ARCHITECT: BRI NEUMANN
 3. PLANNING
 4. PLANNING
 5. PLANNING
 6. PLANNING
 7. PLANNING
 8. PLANNING
 9. PLANNING
 10. PLANNING
 11. PLANNING
 12. PLANNING
 13. PLANNING
 14. PLANNING
 15. PLANNING
 16. PLANNING
 17. PLANNING
 18. PLANNING
 19. PLANNING
 20. PLANNING
 21. PLANNING
 22. PLANNING
 23. PLANNING
 24. PLANNING
 25. PLANNING
 26. PLANNING
 27. PLANNING
 28. PLANNING
 29. PLANNING
 30. PLANNING
 31. PLANNING
 32. PLANNING
 33. PLANNING
 34. PLANNING
 35. PLANNING
 36. PLANNING
 37. PLANNING
 38. PLANNING
 39. PLANNING
 40. PLANNING
 41. PLANNING
 42. PLANNING
 43. PLANNING
 44. PLANNING
 45. PLANNING
 46. PLANNING
 47. PLANNING
 48. PLANNING
 49. PLANNING
 50. PLANNING
 51. PLANNING
 52. PLANNING
 53. PLANNING
 54. PLANNING
 55. PLANNING
 56. PLANNING
 57. PLANNING
 58. PLANNING
 59. PLANNING
 60. PLANNING
 61. PLANNING
 62. PLANNING
 63. PLANNING
 64. PLANNING
 65. PLANNING
 66. PLANNING
 67. PLANNING
 68. PLANNING
 69. PLANNING
 70. PLANNING
 71. PLANNING
 72. PLANNING
 73. PLANNING
 74. PLANNING
 75. PLANNING
 76. PLANNING
 77. PLANNING
 78. PLANNING
 79. PLANNING
 80. PLANNING
 81. PLANNING
 82. PLANNING
 83. PLANNING
 84. PLANNING
 85. PLANNING
 86. PLANNING
 87. PLANNING
 88. PLANNING
 89. PLANNING
 90. PLANNING
 91. PLANNING
 92. PLANNING
 93. PLANNING
 94. PLANNING
 95. PLANNING
 96. PLANNING
 97. PLANNING
 98. PLANNING
 99. PLANNING
 100. PLANNING

SCALE: AS SHOWN
 SHEET NUMBER:
L5.7

REVISIONS:
 REVISION NO. DATE
 1. LANDSCAPE ARCHITECT
 2. LICENSED LANDSCAPE ARCHITECT: BRI NEUMANN
 3. PLANNING
 4. PLANNING
 5. PLANNING
 6. PLANNING
 7. PLANNING
 8. PLANNING
 9. PLANNING
 10. PLANNING
 11. PLANNING
 12. PLANNING
 13. PLANNING
 14. PLANNING
 15. PLANNING
 16. PLANNING
 17. PLANNING
 18. PLANNING
 19. PLANNING
 20. PLANNING
 21. PLANNING
 22. PLANNING
 23. PLANNING
 24. PLANNING
 25. PLANNING
 26. PLANNING
 27. PLANNING
 28. PLANNING
 29. PLANNING
 30. PLANNING
 31. PLANNING
 32. PLANNING
 33. PLANNING
 34. PLANNING
 35. PLANNING
 36. PLANNING
 37. PLANNING
 38. PLANNING
 39. PLANNING
 40. PLANNING
 41. PLANNING
 42. PLANNING
 43. PLANNING
 44. PLANNING
 45. PLANNING
 46. PLANNING
 47. PLANNING
 48. PLANNING
 49. PLANNING
 50. PLANNING
 51. PLANNING
 52. PLANNING
 53. PLANNING
 54. PLANNING
 55. PLANNING
 56. PLANNING
 57. PLANNING
 58. PLANNING
 59. PLANNING
 60. PLANNING
 61. PLANNING
 62. PLANNING
 63. PLANNING
 64. PLANNING
 65. PLANNING
 66. PLANNING
 67. PLANNING
 68. PLANNING
 69. PLANNING
 70. PLANNING
 71. PLANNING
 72. PLANNING
 73. PLANNING
 74. PLANNING
 75. PLANNING
 76. PLANNING
 77. PLANNING
 78. PLANNING
 79. PLANNING
 80. PLANNING
 81. PLANNING
 82. PLANNING
 83. PLANNING
 84. PLANNING
 85. PLANNING
 86. PLANNING
 87. PLANNING
 88. PLANNING
 89. PLANNING
 90. PLANNING
 91. PLANNING
 92. PLANNING
 93. PLANNING
 94. PLANNING
 95. PLANNING
 96. PLANNING
 97. PLANNING
 98. PLANNING
 99. PLANNING
 100. PLANNING



EXHIBIT 2
CONTRACTOR'S
CERTIFICATE OF INSURANCE



EXHIBIT 3

TOWN OF CASTLE ROCK AFFIDAVIT OF INDEPENDENT CONTRACTOR STATUS

I, Fred Caslavka, an authorized representative of LANDSCAPE STRUCTURES, INC., holding legal authority to sign this Affidavit declare under oath that I am 18 years or older and have the capacity to sign this Affidavit.

In accordance with Section 8-70-115, C.R.S., I certify the following:

- With respect to the Agreement, I represent and warrant that it is my express intention to be employed as an independent contractor of the Town of Castle Rock (the "Town") for purposes of performing the work or services which are the subject of the Agreement. I understand and confirm that the Town reasonably relied on this intention in entering into the Agreement.
- The Town does not require I work exclusively for the Town, except that I may choose to work exclusively for the Town for a finite period of time specified in the document.
- The Town does not establish a quality standard for the work or services performed pursuant to the Agreement, except that the Town may provide plans and specifications regarding the work but cannot oversee the actual work or provide instruction as to how the work is performed.
- The Town does not pay a salary or hourly rate but rather a fixed or contract rate, as noted in the terms and conditions of the Agreement, and any Exhibits made part of the Agreement.
- The Town cannot terminate the work or services performed during the contract period unless otherwise agreed to in the terms and conditions of the Agreement.
- I am not provided with anything, if at all, more than minimal training from the Town.
- The Town does not provide me with tools or benefits for the performance of the work or services which are the subject of the Agreement, except materials and equipment may be supplied.
- The Town does not dictate the time of performance, except that a completion schedule and a range of mutually agreeable work hours may be established in the Agreement.



- The Town does not pay me personally but rather makes checks payable to the trade or business name of the entirety for which I am employed and who is a party to the Agreement; and the Town does not combine their business operations in any way with the entity's business, but instead maintains such operations as separate and distinct.
- I understand that if a professional license to practice a particular occupation under the laws of the State of Colorado requires the exercise of a supervisory function with regard to the work of services performed under this Agreement, such supervisory role shall not affect the independent contractor relationship with the Town.
- **I UNDERSTAND THAT I AM NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS UNEMPLOYMENT COMPENSATION COVERAGE IS PROVIDED BY ME OR THE ENTITY FOR WHICH I AM EMPLOYED.**
- **I UNDERSTAND THAT I AM OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON MONEYS PAID PURSUANT TO THE AGREEMENT.**

CONTRACTOR/CONSULTANT/VENDOR

LANDSCAPE STRUCTURES, INC.

By: *Fred Caslavka*
 Name Fred Caslavka

STATE OF ~~COLORADO~~ MINNESOTA

) ss.

COUNTY OF WRIGHT)

The foregoing instrument as acknowledged before me this 4th day of October, 2022 by Fred Caslavka as CFO of the above mentioned Contractor/Consultant/Vendor.

Witness my official hand and seal.

My commission expires: 1/31/25

Elaine M. Harkess

Notary Public

