



**CONTRACT FOR PLAYGROUND EQUIPMENT AT CLAUDE SCURRY PARK &
COPPERFIELD PARK**
Buyboard Contract #781-25
Playcore Wisconsin, Inc. dba GameTime

This Contract, dated _____, is between the **City of Bryan**, a Texas home-rule municipal corporation (City) and **Playcore Wisconsin, Inc. dba GameTime**, a Wisconsin corporation (Contractor). City and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

1. Scope of Work

The work is generally described as purchase/delivery/install of new playground equipment at Claude Scurry Park & Copperfield Park, in Bryan, Texas. The specifications of the work are more particularly described in attached **Exhibit A**.

2. Payment

The City shall pay the Contractor for completion of the work as set forth in **Exhibit A**. Except in the event of a duly authorized change order, approved by the City in writing, the total cost of all services provided under this Contract may not exceed **\$339,240.66**.

3. Time of Performance

A. All work and services provided under this Contract must be completed by **March 31, 2026**.

B. **Time is of the essence of this Contract.** The Contractor shall be prepared to complete the work in the most expedient and efficient manner possible by the time specified in Section 3.A.

4. Warranty, Indemnification, and Release

A. As an experienced and qualified Contractor, the Contractor agrees that the services provided by the Contractor reflect the professional and industry standards, procedures, and performances. The Contractor agrees the selection and supervision of personnel, and the performance of services under this Contract, will be pursuant to the standard of performance in the profession. The Contractor agrees that the Contractor will exercise diligence and due care and perform in a good and workmanlike manner all of the services pursuant to this Contract. Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the Contractor, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy, competency and quality of the services provided, nor shall the City's approval be

deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid services provided by the Contractor, its employees, associates, agents, or subcontractors.

B. The Contractor shall promptly correct any defective work furnished by the Contractor at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the services hereunder itself shall in no way alter the Contractor's obligations or the City's rights hereunder.

C. In all activities or services performed hereunder, the Contractor is an independent contractor and not an agent or employee of the City. The Contractor and its employees are not the agents, servants, or employees of the City. As an independent contractor, the Contractor shall be responsible for the services and the final work product contemplated under this Contract. Except for materials furnished by the City, the Contractor shall supply all materials, equipment, and labor required for the services to be provided under this Contract. The Contractor shall have ultimate control over the execution of the services. The Contractor shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and the City shall have no control of or supervision over the employees of the Contractor or any of the Contractor's subcontractors.

D. The Contractor must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as their personal property, while in the vicinity of the project or any of the work being done on or for the project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Contractor, its officers, employees, agents, subcontractors, invitees, licensees, and other persons.

E. Responsibility for damage claims (indemnification): Contractor shall defend, indemnify and save harmless the City and all its officers, agents, and employees from all suits, actions, or claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person or persons or property, but only to the extent of the Contractor's negligent performance of the work, or by or on account of any claims or amounts recovered under the Workmen's Compensation Law or any other law, ordinance, order or decree, and his sureties shall be held until such suit or suits, action or actions, claim or claims for injury or damages as aforesaid shall have been settled and satisfactory evidence to the effect furnished the City. Contractor shall defend, indemnify and save harmless the City, its officers, agents and employees in accordance with this indemnification clause only for that portion of the damage caused by Contractor's negligence.

F. Release. The Contractor releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the Contractor or its employees and any loss of or damage to any property of the Contractor or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with, but only to the extent caused by the Contractor's negligent performance of the work. Both the City and the Contractor expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance.

5. Termination

A. The City may terminate this Contract at any time upon thirty (30) calendar days' written notice. Upon the Contractor's receipt of such notice, the Contractor shall cease work immediately. The Contractor shall be compensated for the services satisfactorily performed prior to the termination date.

B. If, through any cause, the Contractor fails to fulfill its obligations under this Contract, or if the Contractor violates any of the agreements of this Contract, the City has the right to terminate this Contract by giving the Contractor five (5) calendar days' written notice. The Contractor will be compensated for the services satisfactorily performed before the termination date.

C. No term or provision of this Contract shall be construed to relieve the Contractor of liability to the City for damages sustained by the City because of any breach of contract by the Contractor. The City may withhold payments to the Contractor for the purpose of setoff until the exact amount of damages due the City from the Contractor is determined and paid.

D. Upon the execution of this agreement and once the manufacturing of goods required for the Work commences, goods may only be cancelled with Contractor's consent on terms that compensate Contractor for reasonable costs incurred in performing the work prior to cancellation date.

6. Insurance Requirements

Contractor agrees to have and maintain the policies set forth in the insurance requirements attached as **Exhibit B**. All policies, endorsements, certificates, and/or binders shall be subject to approval by the City as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the City. A lapse in any required coverage shall be a breach of this Contract.

7. Governmental Contract Requirements

A. Contractor must submit a disclosure of interested parties to the City in accordance with Section 2252.908 of the Texas Government Code and rules adopted under that section. The disclosure must be submitted at the time the Contractor submits the signed contract to the City on a form prescribed by the Texas Ethics Commission.

B. Contractor verifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

C. Contractor verifies, to the extent authorized by law, that it does not, and will not for the duration of this Contract, boycott Israel in accordance with Section 2271.002 of the Texas Government Code.

8. Miscellaneous Terms

A. This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas. Venue for any matter arising from this Contract shall be in the court of competent jurisdiction in Brazos County, Texas.

B. Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

**The City of Bryan
Attn: City Manager
P.O. Box 1000
Bryan, Texas 77805**

**Playcore Wisconsin, Inc. dba GameTime
Attn: Clint Whiteside
PO Box 240981
Charlotte, NC 28224
Email: clint.whiteside@gametime.com**

C. No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

D. This Contract represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

E. This Contract and all rights and obligations contained herein may not be assigned by the Contractor without the prior written approval of the City.

F. The Contractor, its agents, employees, and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Bryan, and with all applicable rules and regulations promulgated by local, state, and national boards, bureaus, and agencies. The Contractor must obtain all necessary permits and licenses required in completing the work and providing the services required by this Contract.

G. Any provision or part of this Contract held to be void or unenforceable under law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and Contractor, who agree that the Contract shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

H. The exhibits attached to this Contract are incorporated herein and shall be considered a part of this Contract. In the event of a conflict between this Contract and any exhibits or attachments to this Contract, the provision of this Contract shall prevail.

I. The Contractor shall apply basic safeguarding requirements and procedures to protect the Contractor's information systems whenever the information systems store, process or

transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by the City to the public or simple transactional information, such as that necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements “reflective of actions a prudent business person would employ” which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016). Contractor shall include the substance of this clause in subcontracts under this contract in which the subcontractor may have City contract information residing in or transiting through its information system.

J. The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract.

CITY OF BRYAN:

RECOMMENDED BY

Kody Junek
Asst Parks Operations/Facilities Manager

APPROVED FOR PROCESSING

Marcus Walker
Parks Ops & Facilities Manager

Hugh Walker
Deputy City Manager

City Manager

APPROVED AS TO FORM

Thomas A. Leeper
City Attorney

APPROVED

Bobby Gutierrez
Mayor

ATTEST

Melissa Brunner
City Secretary

Date: _____

CONTRACTOR:

By: 

Printed Name: Clint Whiteside

Title: Director of Sales Administration

Date: 11/03/2025

EXHIBIT B Insurance Requirements for Other Construction Contracts

Contractor shall procure and maintain for the duration of this contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees, or subcontractors. With respect to General Liability, Contractors Pollution Liability and/or Asbestos Pollution Liability, coverage should be maintained for a minimum of two (2) years after contract completion.

If the Contractor fails to maintain the required insurance, the City shall have the right to withhold payment to Contractor until coverage is reinstated or to terminate the contract.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL).** Contractor shall maintain CGL and, if necessary, commercial umbrella insurance with a limit of not less than **\$2,000,000 per occurrence**. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or CG 25 04) or the general aggregate limit shall be twice the required occurrence limit.
 - 1.1 CGL insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, products-completed operations, property damage, bodily injury, and personal and advertising injury, and liability assumed under an insured's contract.
 - 1.2 **The City, its officers, officials, employees, and volunteers are to be covered as additional insureds** with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. This can be provided in the form of an endorsement to the Contractor's insurance.
2. **Business Automobile Liability (AL).** Contractor shall maintain automobile liability and, if necessary, commercial umbrella liability insurance with a limit not less than **\$2,000,000 per accident**.
 - 2.1. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).
 - 2.2. Coverage shall be written on ISO form CA 00 01, CA 00 08, CA 00 09.
3. **Workers' Compensation (WC).** Contractor shall maintain workers compensation insurance with **Texas Statutory Limits** and Employers Liability insurance with a limit of not less than **\$1,000,000** per accident for bodily injury or disease.
 - 3.1. **This policy shall be endorsed with a waiver of subrogation in favor of the City** for all work performed by the Contractor, its employees, agents, and subcontractors.
4. **Builder's Risk (Course of Construction).** Contractor shall maintain builder's risk insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project with no coinsurance penalty provisions. Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage.

- 4.1. Coverage shall **name the City as a loss payee** as their interest may appear.
 - 4.2 At the option of the City, a Property Installation Floater may be acceptable. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.
5. **Pollution Legal Liability and/or Asbestos Legal Liability.** Contractor shall maintain pollution legal liability and/or asbestos legal liability insurance arising out of the scope of the contractor's services as defined in this contract. Coverage shall be written subject to limits not less than **\$1,000,000** per occurrence or claim, and **\$2,000,000** policy aggregate.
- 5.1 **The City, its officers, officials, employees, and volunteers are to be covered as additional insureds**, with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. This can be provided in the form of an endorsement to the Contractor's insurance.
 - 5.2 If coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that coverage will be maintained or an extended discovery period will be exercised for a period of at least two (2) years after completion of the contract of work.
 - 5.3 If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.
 - 5.4 A copy of the claims reporting requirements must be submitted to the city within 5 days of the City's written request.

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the contractor.

By requiring insurance herein, the City does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to the City in this contract.

Self-insured retentions must be declared and approved by the city. The city may require the contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the City.

General Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured.** The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising

out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. Coverage can be provided in the form of an endorsement to the Contractor's insurance.

2. **Primary Coverage.** For any claims related to this project, the **Contractor's insurance coverage shall be primary** insurance coverage as respects the City, its officers, officials, employees, and volunteers. There shall be no modification to make it excess over other available insurance. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. **Notice of Cancellation.** Each insurance policy required above shall provide that coverage **shall not be canceled, except with notice to the City**. If the City is notified a required insurance coverage will cancel or non-renew during the contract period, the Contractor shall agree to furnish prior to the expiration of such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect.
4. **Acceptability of Insurers.** Insurance is to be placed with insurers authorized to conduct business in the State with a current A.M. Best's rating of no less than A-: VII, unless otherwise acceptable to the City.
5. **Waiver of Subrogation.** Contractor hereby grants to City a waiver of any rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
6. **Umbrella or Excess Policy.** The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance.
7. **Evidence of Insurance.** Contractor shall furnish the City with certificates of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above, including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) before work begins. However, failure to obtain the required documents prior to the work beginning or failure to identify a deficiency from evidence that has been provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance, or as a waiver as to the enforcement of any of these provisions. Contractor shall provide certified copies of all required insurance policies within 10 days of City's written request of said copies.
8. **Subcontractors.** If the Contractor's insurance does not afford coverage on behalf of any subcontractor hired by the Contractor, the Contractor shall require and verify that all subcontractors shall maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is and additional insured on insurance required from subcontractors.

Special Risk and Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.