

CONTRACT

This contract is made and entered into this 2nd day of June, 2021, by and between Play by Design (hereinafter "Contractor"), located at 304 North Geneva Street, Ithaca, NY 14850 and the City of Manitowoc, Wisconsin, a Wisconsin municipal corporation (hereinafter "City"), located at 900 Quay Street, Manitowoc, Wisconsin 54220.

RECITALS

WHEREAS, Play by Design located at 304 North Geneva Street, Ithaca, NY 14850, intends to provide maintenance management for the Community Built Playground at Henry Schuette Park, 3800 Broadway Street, Manitowoc, WI as outlined in "Exhibit A", Play by Design Proposal.

WHEREAS, Play by Design has the ability to perform the required project management services, construction consultation, building materials, tools list and material take off for renovating the Community Playground at Henry Schuette Park.

NOW, THEREFORE, in consideration of the mutual covenants and representations of the parties hereinafter set forth, the undersigned parties hereby agree as follows:

1. Recitals. The above recitals are deemed to be true and correct.
2. Scope of Work. The Contractor agrees to perform the following work and/or furnish the following labor and materials in accordance with the terms of this contract:

All work shall be performed in accordance with the City of Manitowoc's Standard Specifications for Public Works Construction.

See listing of tasks for this project. (Attached are "Exhibit A).

3. Contract Price. The City agrees to pay to the Contractor for the performance of this contract the sum not to exceed **\$9,300.00**.
4. Schedule. Contractor agrees to commence work under this Contract upon its execution and complete performance of this contract in accordance with the City of Manitowoc's Standard Specifications, which are made part of this Contract and are incorporated by reference. The contract completion date shall be **July 30, 2021**.
5. Liquidated Damages. **For every calendar day** of delay in the completion of the work beyond the time specified, unless extended by written agreement, there shall be deducted from the amount due under this Contract as fixed, agreed and liquidated damages, the sum of **One-Hundred Dollars (\$100)**.
6. Payment Schedule. Requests for payment shall be made to the Director of Public Infrastructure. The Director of Public Infrastructure shall make a recommendation on the payment request and submit the same to the City's Board of Public Works when applicable. Contractor shall be entitled to payment within 30 days following approval by the Director of Public Infrastructure. The Contractor shall be required to submit a Lien Waiver prior to the City processing the final payment.

7. Assignment and Subcontracting. Contractor shall not be permitted to sign or subcontract any of the work hereunder without the prior written consent of the City.
8. Insurance and Bonding. Prior to commencing work hereunder, Contractor shall provide City, for approval by the City Attorney, a Certificate of Insurance showing proof of General Liability Insurance in amounts not less \$1,000,000.00 per person per occurrence, \$2,000,000.00 in the aggregate, property damage limits of not less than \$500,000.00 per occurrence, and shall carry the statutory amounts for worker's compensation insurance. Contractor shall include with the Certificate of Insurance two endorsements, one endorsement naming the City of Manitowoc as an additional insured, and a second endorsement giving City thirty (30) days prior notice of non-renewal, modification or cancellation.
9. Applicable Statutes. Any provisions of the Wisconsin Statutes, Federal Law or local ordinances applicable to the work performed hereunder are deemed to be incorporated by reference and made a part of this contract.
10. Sales Tax Exemption. The Contractor shall be required to comply with Chapter 77 of Wisconsin State Statutes and more specifically Section 77.54(9m) as it relates to the sales tax exemption for building materials that become part of a facility for a local unit of government. (This is also known as 2015 Wisconsin Act 126).
11. Contract Notice. Per Wisconsin State Statutes 62.15, a Class I notice has been executed and published for this work on May 25th, 2021.
12. Other Indebtedness to City. It is understood and agreed by the parties hereto that whenever a contractor is for any reason indebted to the City of Manitowoc, the contractor consents that the City of Manitowoc through its officials shall and may, deduct and retain, any such balance out of the money or monies which may be due or become due to the contractor under this contract.
13. Indemnify. Contractor shall defend, indemnify and hold harmless the City of Manitowoc, its officials, officers, employees, representatives and agents against any and all liability, claims, costs, demands, losses, damages, expenses and attorney fees of any kind on account of any injury, damage, or death to any person or property that may arise directly or indirectly caused by or resulting from the work performed under this Contract where the injury, damage, or death is caused by negligence or willful misconduct on the part of the Contractor, subcontractor, officers, employees, r agents.
14. Default. In the event of default or breach in the performance of any of the obligations, covenants, representations or duties under the terms of this Contract by either party, the non-defaulting party shall forward written notice to the defaulting party outlining such default. The defaulting party shall cure such default within thirty (30) days of receiving written notice from non-defaulting party, except that the cure period may be extended to a reasonable time to cure any default that cannot reasonably be cured with the thirty (30) day period, provided that the defaulting party has commenced to cure within the thirty (30) day period and diligently pursues a cure at all times thereafter until the default is cured. The defaulting party shall be responsible for the payment to the non-defaulting party of any outstanding fees, charges or expenses that were incurred by the non-defaulting party on behalf of the defaulting party.

15. Permits. No Permits are anticipated for this project.
16. Termination. Either party may terminate this Contract with ten (10) days written notice to the other party.
17. Notice and Demands. A notice, demand or other communication under this Contract by any party to the other party shall be sufficiently given or delivered and deemed delivered as of the date such notice is delivered to the party intended, if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally and addressed to or personally delivered to:

CITY:
City Clerk
900 Quay Street
Manitowoc, WI 54220

CONTRACTOR:
Play by Design
304 North Geneva Street
Ithaca, NY 14850

Notice and demand given shall be effective only if and when received by the party intended and acknowledged by receipt. The above addresses may be changed at any time by any party by giving written notice in the manner provided above.

18. Assignment. This Contract is not assignable without prior written consent of City.
19. Severability. If any provision of this Contract is deemed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected thereby, and such remainder would then continue to conform to the requirements of applicable laws.
20. Amendments. This Contract can only be amended or modified in writing and signed by the parties involved.
21. Integration. This Contract represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to matters covered hereunder.
22. Survival of Provisions. All indemnification and hold harmless obligations shall survive the expiration or termination of this Contract.
23. Choice of Law. This Contract shall be governed by and construed in accordance with the laws of the State of Wisconsin. All actions or proceedings relating directly or indirectly, to this Contract, whether sounding in contract or tort, shall be litigated only in the circuit court located in Manitowoc County, Wisconsin. All parties to this Contract hereby subject themselves to the jurisdiction of the circuit court for Manitowoc County, Wisconsin.
24. Heading. The section titles have been inserted in this Contract primarily for convenience, and do not define, limit or construe the contents of such paragraphs. If headings conflict with the text, the text shall control.
25. Remedies Cumulative. All rights and remedies hereunder are cumulative, and not exclusive, and shall be in addition to all other rights and remedies provided by applicable law. Failure to exercise or delay in exercising any right or remedy hereunder shall not

operate as a waiver thereof, nor excuse future performance. No waiver discharge or renunciation of any claim or right arising out of a breach of these terms and conditions shall be effective unless in a writing signed by the party so waiving. Any waiver of any breach shall be a waiver of that breach only and not of any other breach, whether prior to subsequent thereto.

26. Construction. All parties have contributed to the drafting of this Contract. In the event of a controversy, dispute or contest over the meaning, interpretation, validity of enforcement of this document or any of its terms or conditions, there shall be no inferences, presumption or conclusion drawn whatsoever against any party whatsoever by virtue of that party having drafted the document or any portion thereof.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract as of the day and year first above written.

SOLE PROPRIETORSHIP OR PARTNERSHIP

Play By Design
Name of Proprietor or Partnership

Sole Proprietor (Seal)
Sole Proprietor or Partner

LEE ARCHIN (Seal)
Partner

[Signature] (Seal)
Partner

Partner

CORPORATION

Name of Corporation

By: _____ (Seal)
President

Attest: _____
Secretary

CORPORATE SEAL

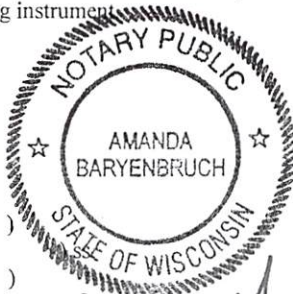
CITY OF MANITOWOC

By: [Signature]
Justin M. Nickels, Mayor

Attest: [Signature]
Mackenzie Reed-Kadow, City Clerk

STATE OF WISCONSIN)
) ss.
MANITOWOC COUNTY)

Personally came before me, this 2nd day of June, 2021, the above named Justin M. Nickels and Mackenzie Reed-Kadow, known to me to be the Mayor and City Clerk of the City of Manitowoc and acknowledge they executed the foregoing instrument.



[Signature]
Amanda Baryenbruch
Notary Public Manitowoc County, WI
My commission (expires)(is) Sep 12, 2021

STATE OF NEW YORK)
TOMPKINS COUNTY)

Personally came before me, this 25 day of May, 2021, the above named Lee Archin, Co-Founder for Play by Design and acknowledge they executed the foregoing instrument.

BECKY L. STONE
Notary Public, State of New York
Reg. No. 01ST6149934
Qualified in Cortland County
My Commission Expires July 17, 2022

[Signature]
Notary Public, Tompkins County, NY
My commission (expires)(is) 7/17/2022



"EXHIBIT A"

304 north geneva street
ithaca, ny 14850

April 12, 2021

City of Manitowoc Parks
Attn: Curtis Hall & Brock Wetenkamp
Manitowoc, WI 54220

PROPOSAL

Working with the City of Manitowoc Parks, Play By Design LLC (hereafter called PBD) will assist in renovating the Community Playground at Henry Schuette Park. PBD will provide project management services, construction consultation, building materials, tools list, and material take-off. The City of Manitowoc will provide hardware, tools, and all volunteer labor for the playground renovation.

The play area will be designed in accordance with all ASTM and CPSC guidelines and safety standards for public playgrounds, as well as the requirements of ADAAG (Americans with Disabilities Act Accessibility Guidelines).

TASK TO BE PERFORMED

- Replacing all handrails on platforms 40" above surfacing with 2x2 balusters and 2x6 structural plastic rails.
- Replacing all handrails on platforms under 40" with 2x6 structural plastic and 2x4 guardrails.
- Replacing all handrail posts (dog eared 2x4s).
- All ramp rails and guardrails on ADA landings will not be replaced.
- The City of Manitowoc Parks staff with the assistance of volunteers will sand and stain structure, remove rails and pipe balusters, and install new rails and balusters under the supervision of PBD.
- Minimum of 7-10 skilled workers, in addition to unskilled labor to assist PBD for a duration of 5 days.
- PBD will assist the City of Manitowoc Parks to identify potential hazards throughout the play structure and remedy them during the 5 days of construction (additional materials may need to be purchased locally).



304 north geneva street
ithaca, ny 14850

PROFESSIONAL FEES \$9,300

Includes:

- Material take-off
- Building Materials
- Project management
- 2 construction consultants for 3 days (12 hrs/day), 1 PBD carpenter for 3 days (12 hrs/day)
- Reimbursement of travel and lodging. PBD estimated about \$3,000, includes flights, car rental, hotel accommodations, travel time expense (hotel accommodations are typically donated).

X

Lee Archin
Co-Founder of Play By Design

X

607.351.5160

www.pbdplaygrounds.com