

Amendment No. 1 to PO-10700-00015857

This is Amendment No. 1 to PO-10700-00015857, dated February 9, 2023, as amended from time to time ("Master Agreement") between the State of Oregon, acting by and through the Department of Administrative Services, Enterprise Goods and Services, Procurement Services ("DAS PS"), as the Lead State, on behalf of the member states of the NASPO ValuePoint Cooperative Purchasing Program and other Participating Entities and Northwest PS Commercial Play, LLC DBA Play & Park Structures. ("Contractor"). This Amendment is effective on the date signed by all parties and upon receipt of all approvals necessary for signing ("Amendment Effective Date").

RECITALS

The purpose of this Amendment is:

1. Modification of Section 5 Pricing
2. Modification to Exhibit 1, Section 8 Shipping and Delivery
3. Modification to Exhibit 3 Description of Goods and/or Services and Discount Percentages.

AGREEMENT

The Master Agreement is amended as follows:

1. Section 5 Pricing is amended as follows (new language is indicated by **underlining and bold** and deleted language is indicated by ~~strikethrough~~):

5. Pricing

Except as provided in this Section, during the term of the Master Agreement, Contractor shall offer Goods and/or Services to Purchasing Entities at the discount percentage listed in Exhibit 3. The discount percentage will remain the same (or increase) throughout the term of the Master Agreement, including any renewals. The discount percentage may never decrease.

The Lead State may conduct an annual audit the Contractor's website or request past customer orders from the Contractor or any Participating Entity to ensure that the Contractor's prices are at the discount percentage off MSRP, as list in Exhibit 3 of the Master Agreement or higher than the percentage off in the Master Agreement. If an error is found, the Lead State will contact the Contractor and request a change be made within 30 Calendar Days or earlier of the finding. The Lead State reserves the right to audit the website at any time if a need arises.

~~All prices and rates are guaranteed for the initial term of the Master Agreement. Commencing after the initial term of the Master Agreement, Contractor may request price increases no more than two times a calendar year. Contractor must submit a request to the Lead State at least 60 days before the proposed effective date of the increase. The request must include sufficient documentation supporting the request (PPI Standard <https://www.bls.gov/PPI/> which includes but not limited to screen shots of current PPI Standard and manufactures letters) that is acceptable to the Lead State.~~

~~Contractor may request for Goods and/or Services to be added or deleted every 6 months (unless special circumstances arise) as approved by the Lead State. The Lead State may prohibit goods on this Master Agreement for environmental health or performance reasons. All Goods and/or Services added will be at the same discounts listed Exhibit 3, Description of Services and Discount Percentages.~~

2. Section 8 Shipping and Delivery of Exhibit 1 of the Master Agreement is amended as follows (new language is indicated by **underlining and bold** and deleted language is indicated by ~~strikethrough~~):

8. Shipping and Delivery

8.1 Shipping Terms. All deliveries will be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. **Contractor may assess a**

separate charge for shipping provided the shipping charge is shown as a separate line item on the invoice.

8.1.1 Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor's until final inspection and acceptance when responsibility will pass to the Purchasing Entity except as to latent defects, fraud, and Contractor's warranty obligations.

8.2 Minimum Shipping. ~~Not Applicable.~~ ~~The minimum shipment amount, if any, must be contained in the Master Agreement. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered will be shipped without charge.~~

8.3 Inside Deliveries or Site Deliveries. To the extent applicable, deliveries will be either "Inside Deliveries or Site Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to a location other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the Order form or Purchase Order. Costs to repair any damage to the building interior (*e.g.*, scratched walls, damage to the freight elevator, etc.) or site caused by Contractor or Contractor's carrier will be the responsibility of the Contractor. Immediately upon becoming aware of such damage, Contractor shall notify the Purchasing Entity placing the Order.

8.4 Packaging. All Goods must be delivered in the manufacturer's standard package. Costs must include all packing and/or crating charges. Cases must be of durable construction, in good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton must be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

3. Exhibit 3 Description of Goods and/or Services and Discount Percentages of the Master Agreement is amended as follows (new language is indicated by **underlining and bold** and deleted language is indicated by ~~strikethrough~~):

1.4 SHIPPING CHARGES

Shipping charges will be added to the invoice as a separate line item and the Participating Entity/Purchaser will pay shipping costs. However, the shipping terms in Section 8 still apply.

Except as expressly amended above, all other terms and conditions of the Master Agreement are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the Master Agreement are true and correct as of the Amendment Effective Date and with the same effect as though made at the time of this Amendment.

Certification:

Any individual signing on behalf of Contractor has the authority and knowledge to make the following certifications, and hereby certifies under penalty of perjury:

- a. the number set forth in the contract is Contractor correct taxpayer identification number;
- b. Contractor is not subject to backup withholding because:
 - i. Contractor is exempt from backup withholding;
 - ii. Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - iii. the IRS has notified Contractor that Contractor is no longer subject to backup withholding.
- c. in the event that Contractor is a general partnership or joint venture, that Contractor signature(s) on this Amendment constitute certifications to the above statements pertaining to the partnership or joint venture, as well as certifications of the above statements as to any general partner or joint venturer signing this Amendment.

**CONTRACTOR, PS Commercial Play, LLC
DBA Play & Park Structures.**

By: _____
Title: Sr. Vice President and Group Manager
Date: 07/05/2023
FEID # 20-0173831

**STATE OF OREGON, acting by and through its
Department of Administrative Services,
Procurement Services**

By: _____
Title: _____
Date: _____

Approved pursuant to ORS 291.047

By: _____
Assistant Attorney General

Date: _____

Matter number: GF-1365-21