

# CITY OF LEWISVILLE, TEXAS

## PURCHASING AGREEMENT

Project: Providing and installing an outdoor fitness system and accessible play panel component for the Rev. Alvin Turner, Sr. Park, located at 700 Hembry & Birch Streets, Lewisville, Texas (the "Project").

This Purchasing Agreement (the "Agreement") is made on this date, January 7, 2018, between the City of Lewisville (the "City") and Kraftsman LP, dba Kraftsman Commercial Playgrounds and WaterParks (the "Contractor").

1. Installation of Equipment. The Contractor shall install the equipment outlined in the Contractor's Proposal, attached hereto as **Exhibit B** (the "Equipment"). Contractor shall furnish or cause to be furnished all personnel, labor, equipment, tools, materials, supervision, supplies, insurance and bonds (if applicable) and all other items necessary to successfully and timely complete the Project in accordance with this Agreement. The Contractor will install all Equipment in a good and professional manner and in accordance with industry standards. The Contractor is responsible for installing a final product that is fully functional and fit for its intended purposes, and meets all requirements set forth in this Agreement, the Contractor's Proposal (**Exhibit B**). The City will be the sole judge of the acceptability of all Equipment installed and services performed under this Agreement.
2. Completion of Project. Installation of the Equipment shall be initiated within ten (10) days after the City provides notice to the Contractor that work may proceed. All Equipment shall be installed to the satisfaction of the City within sixteen (16) weeks from the date of execution of this Agreement. Time is of the essence.
3. Agreement Documents. The Agreement shall include the following documents, and this Agreement does hereby expressly incorporate same herein as if set forth verbatim in this Agreement:
  - A. This Agreement
  - B. The City's Request for Proposals, attached as **Exhibit A**
  - C. The Contractor's Proposal, attached as **Exhibit B**

To the extent that any exhibit is in conflict with provisions of this Agreement or each other, the provisions of this Agreement, then the provisions of **Exhibit A** followed by **Exhibit B** shall prevail in the order listed.

4. Confidential Information. To the extent allowed by law, the City will safeguard and keep from release any documents marked "proprietary" or information not generally available to the public. However, the City will, if required, comply with all requirements of the Texas Public Information Act with regard to any documents in its possession at the time of a request made under that Act.

5. Pricing. The City of Lewisville agrees to a total fee for all Equipment and services to be performed under this Agreement of **\$50,751.09**, as outlined in the Proposal. No work shall be undertaken which requires extra payment without the City's prior written approval.
6. Payment. Contractor shall invoice the City after the Equipment is installed in full and accepted by the City or a correct invoice is received, whichever is later. The City shall not accept the Equipment until after final inspection. The invoice shall be for all amounts owed under this Agreement, and the City shall remit payment within thirty (30) days after receipt of invoice, in accordance with the Texas Prompt Payment Act (Tex. Gov't Code Ch. 2251). All original invoices are to be sent to the City of Lewisville, Attention: AP Division, 151 West Church Street, Lewisville, Texas 75057 or P.O. Box 299002, 75029-9002.
7. Change Orders. Any changes to the installation of Equipment or other services outlined in this Agreement that change the Agreement price or the Agreement time, as specified herein, must be authorized by the City in writing PRIOR to commencement of said work. Any work performed without the City's prior written consent will be at the sole expense of the Contractor.
8. Subcontractors. Subcontractors, if any, will be directed and supervised solely by the Contractor. The Contractor shall require any subcontractors to hold the same insurance as required of the Contractor under this Agreement.
9. Right of Inspection and Required Repairs. The City shall have the right to observe and check all ongoing work in sufficient detail to determine if the installation of Equipment is proceeding satisfactorily. The City shall have the right to inspect all Equipment installed before accepting them and making payments in accordance with this Agreement. Should any portion of the installed Equipment fail to meet the requirement of the City, the Contractor shall repair or replace Equipment failing to meet requirement until compliance with this Agreement is demonstrated.
10. Termination. This Agreement may be terminated by the City at any time upon providing ten (10) days advance written notice to Contractor of the termination date. Contractor shall invoice City for any Equipment installed, services provided, or materials purchased by the City from the Contractor as part of this Project prior to the termination date, but City shall not be required to pay any additional charges as a result the termination. City shall remit payment within thirty (30) days of receipt of invoice.
11. Insurance. During the period of this Agreement, the Contractor will maintain, at its expense, insurance with limits not less than those prescribed in the City's Request for Proposals (**Exhibit A**). All insurance must be reviewed and approved by the City **prior to commencement of work.**
12. Bonds. The Contractor shall provide a two (2) year maintenance bond and warranties as required by the City's Request for Proposals (**Exhibit A**).

13. Worker's Compensation. The Contractor and any of its subcontractors shall abide by the requirements of the Texas Administrative Code, Title 28, RULE §110.110, in regards to workers compensation.
14. Independent Contractor. Contractor shall be considered an independent contractor and not an agent, servant, employee, or representative of the City in the performance of the work and installation of the Equipment. No term or provision herein or act of the City shall be construed as changing that status.
15. Compliance with Laws. The Contractor shall comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws, including, but not limited to the Immigration Reform and Control Act (IRCA).
16. Governing Law and Venue. This Agreement is governed by the laws of the State of Texas. Exclusive venue for any dispute arising out of this Agreement is in Denton County, Texas.
17. Arbitration. In the event of a dispute which may arise under this Agreement, the City does not agree to arbitration.
18. Tax Exempt Status. The City is exempt from and shall not pay state and local sales and use taxes on labor and materials incorporated into the Project. If necessary, it is the responsibility of the Contractor to obtain from the State Comptroller's Office a sales tax permit, resale certificate, and exemption certificate that will enable the Contractor to buy any materials for the Project and then resell the aforementioned materials to the City without paying the tax on the materials at the time of purchase.
19. Entire Agreement. This Agreement and its exhibits contain the entire agreement of the parties with respect to the matter contained herein. All provisions of this Agreement shall be strictly complied with and conformed to by the Contractor, and no amendment to the Agreement shall be made except upon the written agreement of the parties, which shall not be construed to release either party from any obligation of the Agreement except as specifically provided for in such amendment.
20. Assignment. This Agreement may not be assigned by either Party without the written consent of the other Party.
21. Governmental Immunity. Unless otherwise required under the law, the Parties agree that the City has not waived its governmental immunity by entering into and performing their obligations under this Agreement.



22. Liens. The Contractor agrees that, under state law and City charter, no lien may be placed upon City-owned property.

23. Notice. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same, to the address thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to Contractor, to: Kraftsman, LP  
Attn: ~~Jeff Goodman~~ JIM ONEILL  
19535 Haude Road  
Spring, Texas 77388

If to City, to: City of Lewisville  
Attn: Todd White, C.P.M.  
151 W. Church Street  
Lewisville, Texas 75057

24. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

25. Representations. Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

26. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

27. Force Majeure. If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such

party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, order of any kind of government of the United States or the State of Texas or any civil military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability.

28. Waiver. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved.
29. **INDEMNIFICATION**. **THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE CONTRACTOR AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE CONTRACTOR'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**
30. Immigration Reform and Control Act (8 U.S.C. 1324a). The City supports the Immigration Reform and Control Act (IRCA), which is a comprehensive scheme prohibiting the employment



of unauthorized aliens in the United States. The Contractor and its subcontractors shall at all times during the term of the Agreement with the City comply with the requirements of IRCA and shall notify the City within fifteen (15) working days of receiving notice of a violation of IRCA. The Contractor also warrants that it has not had an IRCA violation within the last five (5) years. The City may terminate this Agreement with the Contractor if the City determines (a) the Contractor or its subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years or (b) the Contractor or its subcontractors fail to timely notify the City of an IRCA violation.

31. ADA Compliance. All goods and services provided to the City must be compliant with the Americans with Disabilities Act and any amendments thereto (the “ADA”) and all regulations promulgated pursuant to the ADA. Contractor will be required to certify compliance, if required under the law or otherwise required by the City.
32. Protection of Resident Workers. The City actively supports the Immigration and Nationality Act (INA), which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9) for every worker performing services under the Agreement.
33. Advertising. Contractor shall not advertise or publish, without the City’s prior consent, the fact that the Contractor has entered into this Agreement, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government. Contractor shall not use statements, images, or recordings of City staff in any promotional literature or advertising.
34. Disclosure. Pursuant to Chapter 176 of the Texas Local Government Code, a person, or agent of a person, who contracts or seeks to contract for the sale or purchase of property, good, or services with the City of Lewisville must file a completed conflict of interest questionnaire which is available online at [www.ethics.state.tx.us](http://www.ethics.state.tx.us). The conflict of interest questionnaire must be filed with the City Secretary of the City of Lewisville no later than the seventh business day after the person or agent begins contract discussions or negotiations with the City of Lewisville or submits to the City of Lewisville an application, response to a request for proposal or bid, correspondence, or another writing related to a potential agreement with the City of Lewisville. An updated conflict of interest questionnaire must be filed in accordance with Chapter 176 of the Local Government Code. An offense under Chapter 176 is a Class C misdemeanor.

Contractor should consult with legal counsel if you have questions regarding its compliance with the requirements of Chapter 176. It is the responsibility of each person or agent who is

contracting or seeking to contract with the City of Lewisville to comply with the filing requirement of Chapter 176.

35. Texas Government Code Chapter 2270. Pursuant to Texas Government Code Chapter 2270, Contractor affirms that execution of this Agreement serves as written verification that Contractor: (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the Agreement.
36. Texas Government Code Chapter 2252. Pursuant to Texas Government Code Chapter 2252, Subchapter F, Contractor affirms, by entering into this Agreement, that is it not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to Iran, Sudan, or a foreign terrorist organization.
37. Closure. By signature below, the parties to this Agreement hereby bind themselves to the terms stated herein, including all attachments referred to herein.

**(SIGNATURES ON FOLLOWING PAGE)**

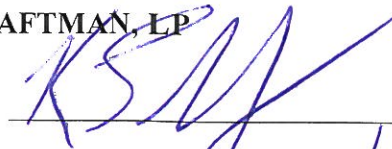
IN WITNESS, WHEREOF, we, the contracting parties, by our duly authorized agents, hereto affix our signatures as of the date listed above.

CITY OF LEWISVILLE

By: \_\_\_\_\_  
Donna Barron, City Manager

Date: \_\_\_\_\_

KRAFTMAN, LP

By:  \_\_\_\_\_  
Kris Sperberg, VP  
Printed Name/Title

Date: 1/7/19

19535 Haude Rd  
Street Address

Spring Tx 77388  
City, State, and Zip

281-353-9599  
Telephone Number

281-353-2265  
Fax Number

info@kraftsmenplay.com  
Email Address

26-0438158  
Federal Tax ID Number

APPROVED AS TO FORM:

\_\_\_\_\_  
Lizbeth Plaster, City Attorney