

SAINT PETERSBURG CITY COUNCIL

Report Agenda

Meeting of April 19, 2018

To: The Honorable Lisa Wheeler-Bowman, Chair, and Members of City Council

Subject: A resolution approving an agreement between the City of St. Petersburg, Florida, ("City") and Earthscape Play Inc. ("Eandscape") to design, fabricate and oversee the installation of children's playground equipment at the Pier Approach for an amount not to exceed \$700,000; authorizing the City Attorney's office to make non-substantive changes to the agreement; authorizing the Mayor, or his designee, to execute the agreement and all other documents necessary to effectuate this transaction; approving a transfer in the amount of \$1,000,000 from the unappropriated balance of the Downtown Redevelopment Fund (1105) to the General Capital Improvement Fund (3001) to provide funding for the purchase and installation of the Pier playground equipment; authorizing a supplemental appropriation in the amount of \$1,000,000 from the increase in the unappropriated balance of the General Capital Improvement Fund (3001) resulting from the above transfer to the Pier Approach Project (15377); and providing an effective date. (Engineering Project No. 09227-119; Oracle No. 15377).

Explanation: On March 23, 2017, the City issued Request for Qualifications No. 6414 for Playground Equipment for the Pier Approach. The purpose of the solicitation was to select a playground equipment vendor to work with the Pier Approach design team to design, fabricate and install play equipment that would fit in with, and complement, the design of the Pier Approach.

On August 24, 2017, City Council approved Ordinance No. 292-H adopting amendments to the Intown Redevelopment Plan (IRP) to delete reference to "mixed-use transportation facility" and reallocate its \$14,000,000 in allowable project cost that can be funded by Tax Increment Financing (TIF), such that up to \$10 million may be spent on enhancements to the "Municipal Pier Project" and/or "Enhancements to the Downtown Waterfront Master Plan Improvements in the Pier District". The Pinellas County Commission approved the amendments to the IRP and the Interlocal Agreement on September 14, 2017. The Pier Approach project has been designed with the capacity to add a destination children's playground from funds authorized to be spent as "Enhancements to the Municipal Pier Project" and/or "Enhancements to the Downtown Waterfront Master Plan Improvements in the Pier District." The vendor's final playground design will focus on natural play and learning opportunities in a Florida outdoors-themed environment. On April 25, 2017, the City received nine (9) Statements of Qualifications (SOQs) from the following firms:

1. Advanced Recreational Concepts, LLC
2. Bliss Products and Services, Inc.
3. Dynamo Industries
4. Earthscape Play Inc.
5. Kompan, Inc.
6. Landscapes Structures, Inc.
7. Playmore West Inc.
8. Playpower LT Farmington, c/o Playworx Playsets LLC
9. Topline Recreation Inc.

On May 22, 2017, the SOQs were evaluated by a committee comprised of the following City staff and citizen volunteers:

Raul Quintana, City Architect
Richard Craft, Recreation & Programming Superintendent
David Hugglestone, Senior Capital Project Coordinator
Lael Arango, Director of Education, Great Explorations
Kathy Gustafson-Hilton, Client Liaison & Creative Thinking Facilitator, Hands On! Studio

The SOQs were evaluated based on the following criteria:

- Qualifications and experience of the proposed personnel
- Project approach
- Relevant project examples
- Preliminary design

Following the initial review of the submissions, four firms were shortlisted. The shortlisted firms were:

1. Dynamo Industries
2. Earthscape Play Inc.
3. Kompan, Inc.
4. Landscape Structures, Inc.

The four finalists were invited to make oral presentations on June 22, 2017. Following the presentations, the evaluation committee ranked the firms as follows:

1. Earthscape Play Inc.
2. Kompan, Inc.
3. Landscape Structures, Inc.
4. Dynamo Industries

On September 14, 2017, the Procurement and Supply Management Director authorized a Letter of Agreement between the City and Earthscape to provide conceptual design and coordination services with the Pier Approach design team for a fixed-fee amount of \$10,000. The scope included a program narrative, development of a conceptual design in collaboration with City staff and key public stakeholders, development of a proposed list of play features, and a preliminary analysis of the project cost. Meetings were held with the City and design team to develop a design that fits within the unique, active nature-themed design of the Pier Approach and would be a destination in, and of, itself within the City's waterfront. The concept design became the basis for this Agreement.

The not-to-exceed value of the Playground Equipment is \$700,000 and will be confirmed during the final design phase and prior to fabrication. The balance of the funding (\$300,000) will be used for the purchase of the surfacing material and the installation of the equipment. Skanska will be consulted during final design phase and will be asked to provide a price for the installation which will be included in a future amendment to their CMAR Agreement.

Earthscape is headquartered in Ontario, Canada, and has designed and installed play equipment throughout North America using natural materials and renewable products. Their work includes Florida locations such as Starkey Ranch in Tampa. Each playground is customized to reflect the context and concept of the community in which it is located. Earthscape's concept will use sustainable products such as Black Locust wood, which will not rust, rot or decay, and stainless steel connections.

Recommendation: Administration recommends approving an agreement between the City of St. Petersburg, Florida, and Earthscape Play Inc. ("Earthscape") to design, fabricate and oversee the installation of children's playground equipment at the Pier Approach for a not to exceed amount of \$700,000; authorizing the City Attorney's office to make non-substantive changes to the agreement; authorizing the Mayor, or his designee, to execute the agreement and all other documents necessary to effectuate this transaction; approving a transfer in the amount of \$1,000,000 from the unappropriated balance of the Downtown Redevelopment Fund (1105) to the General Capital Improvement Fund (3001) to provide funding for the purchase and installation of the Pier playground equipment; authorizing a supplemental appropriation in the amount of \$1,000,000 from the increase in the unappropriated balance of the General Capital Improvement Fund (3001) resulting from the above transfer to the Pier Approach Project (15377); and providing an effective date. (Engineering Project No. 09227-119; Oracle No. 15377).

Cost/Funding/Assessment information: Funds will be available after the transfer in the amount of \$1,000,000 from the unappropriated balance of the Downtown Redevelopment Fund (1105) to the General Capital Improvement Fund (3001) to provide funding for the purchase and installation of the Pier playground equipment; authorizing a supplemental appropriation in the amount of \$1,000,000 from the increase in the unappropriated balance of the General Capital Improvement Fund (3001) resulting from the above transfer to the Pier Approach Project (15377).

Attachments: Technical Evaluation (4 pages)
Meeting Minutes (3 pages)
Agreement (12 pages)
Resolution

Approvals:



Administrative



Budget

**Technical Evaluation
981-61 Playground Equipment for the Pier Approach**

Summary Work Statement

The City received nine statements of qualifications for RFQ No. 6414, Playground Equipment for the Pier Approach. The successful offeror will design, fabricate and install a unique, active nature-themed children's play equipment solution as part of a destination waterfront playground included within the design of the new St. Petersburg. The proposals were received from the following:

1. Advanced Recreational Concepts, LLC
2. Bliss Products and Services, Inc.
3. Dynamo Industries
4. Earthscape Play Inc.
5. Kompan, Inc.
6. Landscapes Structures, Inc.
7. Playmore West Inc.
8. Playpower LT Farmington Inc, c/o Playworx Playsets LLC
9. Topline Recreation Inc.

Evaluation Committee

Evaluation of the statements of qualifications was conducted by:

Raul Quintana, City Architect
Richard Craft, Recreation & Programming Superintendent
David Hugglestone, Senior Capital Project Coordinator
Lael Arango, Director of Education, Great Explorations
Kathy Gustafson-Hilton, Client Liaison & Creative Thinking Facilitator, Hands On! Studio

Evaluation Criteria

The statements of qualifications were evaluated based on the following criteria:

- Qualifications and experience of the proposed personnel
- Project approach
- Relevant project examples
- Ability to achieve originality and a destination playground

Offerors' Profiles

Below are profiles of the offerors and summaries of the strengths and weaknesses as reported after the initial independent review.

Advanced Recreational Concepts, LLC is headquartered in Melbourne, FL, and was incorporated in Florida in 2003. The firm has been in business for 14 years and employs 30 people.

Strengths include: Their depth of experienced personnel; local presence in Florida; visuals and CAD drawings; intent to collaborate on final design; project approach, management and analysis; use of recycled products; and proposed community involvement.

Weaknesses include: Their lack of imagination, creativity and uniqueness; preliminary design; non-use of recycled products; and no project examples were provided that are similar to the beach or salt water environment.

The statement of qualifications has major deficiencies and does not meet the City's requirements.

Bliss Products and Services, Inc. is headquartered in Lithia, Georgia. As a manufacturer's representative/contractor, they were incorporated in Florida in 1984. The firm has been in business for 33 years and employs 12 people.

Strengths include: Their proposed product representatives have years of experience; prior projects share similar environmental conditions; strong focus on developmentally appropriate and all-abilities play; use of wood; and provided information on recycled materials

Weaknesses include: Their lack of clarity of the roles of Bliss and the manufacturers; prior projects; process; warranty; project management; and preliminary design.

The statement of qualifications has major deficiencies and does not meet the City's requirements.

Dynamo Industries is headquartered in Ontario, Canada. They have been in business for 18 years and employ 55 people.

Strengths include: They are a manufacturer and a design build company; prior projects in Florida; understanding of unique setting of the Pier Approach; designs proposed to create iconic destination playground for all ages and abilities; proposed project manager who was superintendent for City of Orlando; familiarity with environmental challenges that include salt water; explanation of warranty; proposed completion time; provided a list of proposed high quality products; commitment to collaborative design process with the City and architect; narrative that describes a unique destination playground.

Weaknesses include: Their presentation did not convey a super unique concept and information on how shade was considered; their 60 projects currently in production which may distract from focus and inability to possibly meet bonding requirement.

The statement of qualifications meets the City's requirements.

Earthscape Play Inc. is headquartered in Ontario, Canada. They have been in business for 12 years and employ 50 people.

Strengths include: Their proposed design-build team of designers, engineers and craftsmen; experience in customized play equipment; proposed use of natural material and renewable products; understanding of the unique feature of the site, project and need of signature destination for all ages; prior detailed project examples; proposed design and narrative.

Weaknesses include: Their minimal work completed in Florida, although they will be installing in Starkey Ranch; unfamiliar with environment conditions and proposed completion time of 35 to 40 weeks.

The statement of qualifications meets the City's requirements.

Kompan Inc. was incorporated in Delaware in 1991. The firm has been in business for 26 years and employs 90 people.

Strengths include: Their proposed diverse design-build team and prior projects completed in southern states; ability to do a customized turnkey project; understanding of unique design opportunity; capacity, creativity and willingness to collaborate with the City to create a unique experience; use of child's sketch concept to completion design images and social responsibility.

Weaknesses include: Their limited information on roles of proposed team; experience on park projects; focus on all-abilities play and vision for this project; narrative and preliminary design.

The statement of qualifications meets the City's requirements.

Landscape Structures, Inc. was incorporated in Minnesota in 1971. The firm has been in business for 46 years and employs 396 people.

Strengths include: Their awareness of the City's values; capacity as a large company with large budget projects; proposed experienced, dedicated design-build team, familiar with Florida; project manager worked on projects for the city; case studies provided; specializes in all-abilities play; proposed warranty; demonstration of environmental sustainability efforts; honors and awards received.

Weaknesses include: limited demonstration of creativity for unique destination playground; proposed completion time of 365 days and structures that are not visually appealing.

The statement of qualifications meets the City's requirements.

Playmore West Inc. is headquartered in Fort Myers, Florida, and was incorporated in 2000. The firm has been providing this service for 17 years and employs 14 people.

Strengths include: Their local presence in Florida; proposed completion in 120 days; experience with unique equipment inspired by nature and collaborating with architects; environmental sustainability commitment; community involvement.

Weaknesses include: Lack of roles of proposed team; completed project and approach; narrative and preliminary design.

The statement of qualifications does not meet the City's requirements.

Playpower LT Farmington Inc. is headquartered in Missouri and was incorporated in 2005. The firm has been in business for 11 years and employs 15 people.

Strengths include: Proposed delivery in 120 days and discount offered.

Weaknesses include: Submittal of incomplete proposal; lack of information for proposed team; project approach; prior project examples; narrative and preliminary design.

The statement of qualifications does not meet the City's requirements.

Topline Recreation, Inc. is headquartered in Deltona, Florida and was incorporated in 2011. The firm has been in business for 6 years and employs 5 people.

Strengths include: Their local presence in Florida; experience with municipalities; reasonable completion time of 10 weeks; proposed turf and surface that address possible challenges.

Weaknesses include: Their company's small size; lack of prior projects completed; project approach; process and narrative.

The statement of qualifications does not meet the City's requirements.

Shortlisting and Oral Presentations

The statements of qualifications were initially evaluated solely on the evaluation criteria established in the RFQ. On May 22, 2017, Advanced, Bliss, Playmore, Playpower and Topline were removed from further consideration. The four finalists were invited to make oral presentations on June 22, 2017, before the evaluation committee for the purpose of clarifications and to ensure a full understanding of the City's requirements. The presentations also enabled the committee to have a full understanding of the offerors' proposals and responses. Following the presentations, the evaluation committee ranked the proposals as follows:

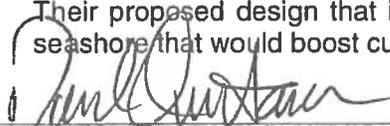
Rank	Firm
1.	Earthscape Play Inc.
2.	Kompan, Inc.
3.	Landscape Structures, Inc.
4.	Dynamo Industries

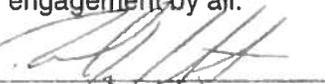
Recommendation for Award

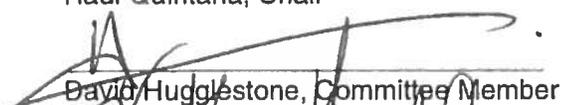
Earthscape Play Inc. has met the requirements for RFQ No. 6414 and was determined to be the most advantageous for the City, taking into consideration their qualifications, unique approach and vision for a destination playground and the evaluation criteria set forth in the RFQ.

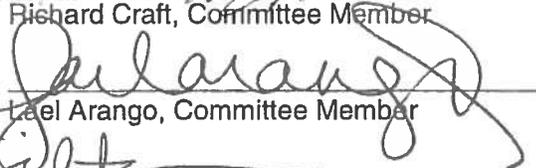
Earthscape Play Inc. was selected for the following reasons:

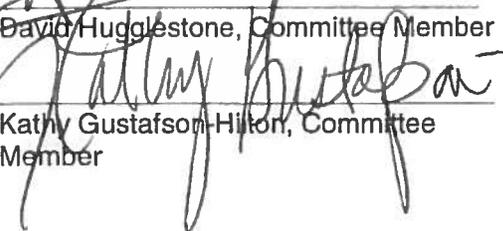
- Their proposed design-build team of designers, engineers and craftsmen;
- Their experience in customized play equipment;
- Their creativity and imagination;
- Their explanation of proposed use of natural material and renewable products which they presented;
- Their understanding of the unique feature of site, project and need of a signature destination for all ages;
- Their proposed design that included softer colors, water based stain and elements on the seashore that would boost curiosity and allow for engagement by all.

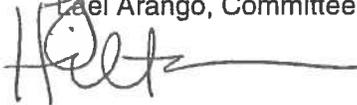

Raul Quintana, Chair


Richard Craft, Committee Member


David Hugglestone, Committee Member


Lael Arango, Committee Member


Kathy Gustafson-Hilton, Committee Member



City of St. Petersburg
Meeting Minutes
 Procurement and Supply Management

Title: RFQ No. 6414 Playground Equipment for the Pier
Meeting Date: Monday, May 22, 2017
Time: 1:30 p.m.
Place: Municipal Services Center, One 4th Street North, 8th Fl.
 Conference Room 800, St. Petersburg, FL

Agenda Item	Discussion/Action Taken
1. Introductions	Committee Members: Raul Quintana, David Hugglestone; Richard Craft, Kathy Gustafson-Hilton, Lael Arango Advisory Staff: Harold Somarriba, Jason Jensen (absent) WJA ; Karen Dewar
<ul style="list-style-type: none"> a. Public Comments b. Florida's Open Meeting Law – FS 286.011 [Karen Dewar] c. Prohibited Communication - AP #050100 [Karen Dewar] d. Chairperson identified – Raul Quintana 	Two members of the public were present and declined to comment.
2. Evaluations of Proposals (Strengths and Weaknesses)	Motion by: Kathy Gustafson-Hilton to remove Playpower from further consideration Seconded by: Lael Arango Votes: Affirmatives (5)
<ul style="list-style-type: none"> a. Advanced Recreational Concepts, LLC b. Bliss Products and Services, Inc. c. Dynamo Industries d. Earthscape Inc. e. Kompan, Inc f. Landscapes Structures, Inc. g. Playmore West Inc. h. Playpower LT Farmington Inc, c/o Playworx Playsets LLC i. Topline Recreation Inc. 	Motion by: Kathy Gustafson-Hilton to remove Topline from further consideration Seconded by: Lael Arango Votes: Affirmatives (5)
3. Rank/Shortlist/Invite to make oral presentation	Motion by: Rick Craft to remove Bliss from further consideration Seconded by: Kathy Gustafson-Hilton Votes: Affirmatives (5)
	Motion by: David Hugglestone to remove Advanced from further consideration Seconded by: Kathy Gustafson-Hilton Votes: Affirmatives (5)

Motion by: Kathy Gustafson-Hilton
to remove Playmore from further
consideration

Seconded by: David Hugglestone
Votes: Affirmatives (5)

Motion by: Kathy Gustafson-Hilton to
invite Earthscape to present

Seconded by: Lael Arango
Votes: Affirmatives (5)

Motion by: Lael Arango to invite
Dynamo to present

Seconded by: David Hugglestone
Votes: Affirmatives (5)

Motion by: David Hugglestone to
invite Kompan to present

Seconded by: Richard Craft
Votes: Affirmatives (4); Opposed (1)

Motion by: David Hugglestone to
invite Landscape to present

Seconded by: Lael Arango
Votes: Affirmatives (5)

Motion by: Ruchard Craft to rank
Eandscape 1; Landscape 2;

Dynamo 3; and Kompan 4
Seconded by: Kathy Gustafson-
Hilton

Votes: Affirmatives (5)

4. Clarifications/Questions

Actions: Clarifications, questions
and invitations to be sent to the four
companies for
presentations/interviews

5. Adjournment

Meeting adjourned at 3:30 p.m.

City of St. Petersburg
Meeting Agenda
 Procurement and Supply Management

Title: RFQ No. 6414 Playground Equipment for the Pier
Meeting Date: Thursday, June 22, 2017
Time: 12:20 p.m.
Place: Lake Vista Recreation Center, 1401 62nd Avenue South,
 St. Petersburg - Conference Room

Agenda Item	Discussion/Action Taken
1. Introductions	Committee Members: Raul Quintana, David Huggelstone; Richard Craft, Kathy Gustafson-Hilton, Lael Arango Advisory Staff: Jason Jensen and Harold Somarriba, WJA (absent); Evan VanDerPloeg, WJA; Karen Dewar
<ul style="list-style-type: none"> a. Public Comments b. Florida's Open Meeting Law – FS 286.011 [Karen Dewar] c. Prohibited Communication - AP #050100 [Karen Dewar] 	No members of the public were present.
2. Evaluations of Proposals – Oral Presentations (Strengths and Weaknesses) – Raul Quintana	Motion by: Rick Craft to rank Earthscape 1. Seconded by: Lael Arango Votes: Affirmatives (5)
<ul style="list-style-type: none"> a. Dynamo Industries b. Earthscape Inc. c. Kompan, Inc d. Landscapes Structures, Inc. 	Motion by: David Huggelstone to rank Kompan 2. Seconded by: Lael Arango
3. Rank	Motion by: David Huggelstone to rank Landscape 3 and Dynamo 4. Seconded by: Kathy Gustafson-Hilton
4. Clarifications/Questions	Action: Karen to notify offerors of ranking and Raul to make contact with Earthscape.
5. Negotiation	
6. Adjournment and Dissolution	Evaluation committee dissolved at 1:35 p.m.

AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into on the _____ day of _____, 2018. (“Effective Date”), by and between Earthscape Play Inc. (“Contractor”) and the City of St. Petersburg, Florida (“City”) (collectively, “Parties”).

1. **Contractor Duties.** Contractor shall perform the tasks and provide the equipment and associated documentation set forth in Appendix A of this Agreement (“Scope of Work”) upon a written notice to proceed from the City for each of the tasks identified in Appendix A. Without limiting the generality of the foregoing, Contractor shall (i) finalize the concept design that Contractor developed pursuant to a letter agreement between the Parties dated September 14, 2017, (ii) develop a detailed design and rough order magnitude cost estimate for custom playground equipment (“Equipment”) for the St. Petersburg Pier Approach, (iii) fabricate and deliver the Equipment to the City, and (iv) oversee the installation of the Equipment. The installed Equipment shall meet the specifications developed by Contractor in the detailed design phase of this Agreement (“Specifications”). Appendix A is attached to this Agreement and made a part hereof.

1. **Schedule.** Contractor shall comply with all applicable deadlines and milestones provided by the City pursuant to Appendix A (“Schedule”). Contractor acknowledges that time is of the essence as to Contractor’s obligation to deliver the Equipment pursuant to the Specifications by May 31, 2019 (“Delivery Deadline”).

2. **Agreement Components.**
 - A. The agreement components are this Agreement, the appendices to this Agreement, and the following documents, which are made a part hereof by reference (“Other Documents”):
 - i. RFQ No. 6414 dated March 23, 2017 (“Document 1”)
 - ii. Offeror’s Statement of Qualifications dated May 9, 2017 (“Document 2”)
 - iii. Letter Agreement between the Parties dated September 14, 2017 for conceptual design and coordination services, along with the deliverables provided thereunder (“Document 3”)

 - B. In the event of an inconsistency or conflict between or among the documents referenced in this Agreement, the following order of precedence shall govern: this Agreement, exclusive of its appendices, (ii) the appendices to this Agreement, and (iii) the Other Documents. In the event of an inconsistency or conflict between or among the Other Documents, the order of precedence shall be the order the documents are listed above (e.g. Document 1 shall govern over Document 2).

3. **Payment.** Provided Contractor faithfully performs its obligations contained herein and the City has accepted the Equipment furnished and work performed pursuant to this Agreement, the City shall pay Contractor in accordance with the pricing set forth in Appendix B (“Pricing”) an amount not to exceed seven hundred thousand dollars

(\$700,000) (“Maximum Contract Price”), which shall be inclusive of all design and delivery costs, Contractor’s warranty obligations, and any out-of-pocket expenses that may be incurred in providing the Equipment and work required under this Agreement (including but not limited to transportation, mileage, lodging, and meals). The Pricing and the Maximum Contract Price may be increased only in strict accordance with this Agreement. Appendix B is attached to this Agreement and made a part hereof. Contractor shall invoice the City upon completion of each item set forth in Appendix B, and the City shall pay each such invoice within thirty (30) days after receipt, provided Contractor is in compliance with the terms and conditions of this Agreement.

4. **Liquidated Damages.** The Parties agree that it would be extremely difficult and impractical under known and anticipated facts and circumstances to ascertain and fix the actual damages the City would incur in the event Contractor fails to deliver the Equipment by the Delivery Deadline. Therefore, Contractor and its surety shall be liable for and shall pay to the City the sums hereafter stipulated as fixed, agreed and acknowledged as reasonable liquidated damages, not as a penalty, for each calendar day of delay beyond the Delivery Deadline until Equipment conforming to the Specifications is delivered, in the aggregate amount of \$500 per calendar day. These liquidated damages shall be the City’s sole and exclusive remedy for Contractor’s delay in delivering the Equipment by the Delivery Deadline.
5. **Term.** The term of this Agreement shall commence on the Effective Date and remain in full force and effect until Contractor has performed its obligations under this Agreement, the City has accepted all Equipment and work performed in accordance with this Agreement, all applicable warranty periods have expired, and Contractor has satisfactorily completed all warranty-related work.
6. **Inspections and Acceptance.**
 - A. **Inspection.** The City shall have a right to inspect the Equipment within ten (10) business days after delivery to determine whether the Equipment suffered any transportation-related damage and whether it conforms to the Specifications. Additionally, within a reasonable time not to exceed ten (10) business days after final installation of the Equipment, the City shall have a right to inspect the Equipment to determine whether the installed Equipment meets the requirements set forth in this Agreement.
 - B. **Acceptance.** The City shall accept the Equipment if all of the Equipment fully conforms to the Specifications and the requirements of this Agreement, and shall accept all work that conforms to the requirements of this Agreement. The City will notify Contractor of such acceptance in writing.
 - C. **Nonconforming Equipment.** The City will give Contractor notification within fifteen (15) business days of the City’s receipt of the Equipment of any discovery by the City of non-conformance of any of the Equipment with the Specifications or requirements of this Agreement (“Non-conformance”). Contractor shall correct

the Non-conformance or exchange the defective Equipment with replacement Equipment within a reasonable time mutually agreed to by the Parties, at no additional cost to the City. Contractor's failure to timely correct any Non-conformance is grounds for the City to reject and return to Contractor any non-conforming Equipment at no additional cost to the City.

7. **Performance and Payment Bond.** In the event the City issues Contractor a notice to proceed with the Task 2 work set forth in Appendix A, Contractor shall furnish a performance and payment bond to the City (in the form required by the City) executed by a surety company duly authorized to do business in the State of Florida. The amount of the performance and payment bond shall be equal to six hundred forty thousand dollars (\$640,000), as security to the City for Contractor's faithful performance of the procurement, fabrication, and delivery of the Equipment and as security for the payment to all persons performing labor and furnishing materials in connection with the procurement, fabrication, and delivery of the Equipment. The surety shall be duly authorized to do business in the State of Florida and have a rating no lower than "A-, VIII" by A.M. Best rating agency or a similar rating agency approved by the City.

8. **Warranties.**

A. Scope. In addition to any other warranties that may exist, including any warranties offered or accepted by Contractor in the Other Documents, Contractor warrants that as of the City's acceptance of the Equipment, the Equipment shall (i) conform to the Specifications; (ii) be fit for the purpose for which such Equipment is ordinarily employed; and (iii) be free from defects in materials and workmanship for the periods set forth in Appendix A, subject to the exclusions set forth therein. To the extent longer warranty periods are set forth in the Other Documents, such longer warranty periods shall apply.

B. Remedy. In the event the City discovers during the applicable warranty period that the Equipment or any portion or parts thereof was not as warranted, the City shall notify Contractor within ten (10) business days after discovery, and Contractor shall repair or replace the defective Equipment or parts at no cost to the City within a reasonable time mutually agreed to by the Parties. Repaired or replaced Equipment or parts shall be warranted as new Equipment is warranted pursuant to this Agreement.

9. **Termination.**

A. This Agreement may be terminated at any time by the City for convenience upon thirty (30) days written notice to Contractor. In the event of termination pursuant to this paragraph, the City shall pay Contractor for work performed and any Equipment delivered up to the effective date of termination.

B. The City may terminate this Agreement upon written notice to Contractor in the event the Contractor defaults on any of the terms and conditions of this Agreement and such failure continues for a period of thirty (30) days following

notice from the City specifying the default; provided, however, that the City may immediately terminate this Agreement, without providing the Contractor with notice of default or an opportunity to cure, if the City determines that the default is impossible to cure or that the Contractor has failed to comply with any of the terms and conditions of this Agreement related to indemnification or insurance coverage.

- C. Termination of this Agreement shall act as a termination of the Other Documents.

10. **Indemnification.**

- A. Contractor shall defend at its expense, pay on behalf of, hold harmless and indemnify the City, its officers, employees, agents, elected and appointed officials and volunteers (collectively, "Indemnified Parties") from and against any and all claims, demands, liens, liabilities, penalties, fines, fees, judgments, losses and damages (collectively, "Claims"), whether or not a lawsuit is filed, including, but not limited to Claims for damage to property or bodily or personal injuries, including death at any time resulting therefrom, sustained by any persons or entities; and costs, expenses and attorneys' and experts' fees at trial and on appeal, which Claims are alleged or claimed to have arisen out of or in connection with, in whole or in part, directly or indirectly:
 - (i) The performance of this Agreement (including any amendments thereto) by Contractor, its employees, agents, representatives or subcontractors; or
 - (ii) The failure of Contractor, its employees, agents, representatives or subcontractors to comply and conform with applicable Laws (as defined herein); or
 - (iii) Any negligent act or omission of the Contractor, its employees, agents, representatives, or subcontractors, whether or not such negligence is claimed to be either solely that of the Contractor, its employees, agents, representatives or subcontractors, or to be in conjunction with the claimed negligence of others, including that of any of the Indemnified Parties; or
 - (iv) Any reckless or intentional wrongful act or omission of the Contractor, its employees, agents, representatives, or subcontractors; or
 - (v) Any infringement or alleged infringement of the Equipment, the City's use of the Equipment, or any materials or parts contained in the Equipment upon any copyright, trademark, patent, or trade secret right of any party; or
 - (vi) Contractor's failure to maintain, preserve, retain, produce, or protect records in accordance with this Agreement and applicable Laws (including

but not limited to Florida laws regarding public records).

- B. The provisions of this paragraph are independent of, and will not be limited by, any insurance required to be obtained by Contractor pursuant to this Agreement or otherwise obtained by Contractor, and shall survive the expiration or earlier termination of this Agreement with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination.

11. Insurance.

- A. Contractor shall carry the following minimum types and amounts of insurance at its own expense:
 - (vii) Commercial general liability insurance in an amount of at least One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate in occurrences form. This policy shall include coverage for (i) personal injury or death or property damage or destruction; (ii) business interruption; (iii) fire legal liability in the minimum amount of One Hundred Thousand Dollars (\$100,000); and (iv) contractual liability under this Agreement.
 - (viii) Automobile liability insurance of \$1,000,000 combined single limit covering all owned, hired and non-owned vehicles.
 - (ix) Workers' Compensation insurance as required by Florida law and Employers' Liability Insurance in an amount of at least \$100,000 each accident, \$100,000 per employee, and \$500,000 for all diseases.
- B. All of Contractor's insurance policies, except Workers' Compensation, shall name the Indemnified parties as additional insureds.
- C. All policies shall provide that the City will be provided notice at least thirty (30) days prior to any cancellation, reduction or material change in coverage.
- D. Contractor shall provide the City with Certificates of Insurance on a standard ACORD form reflecting all required coverage. At the City's request, Contractor shall provide copies of current policies with all applicable endorsements.
- E. All insurance required shall be provided by responsible insurers licensed in the State of Florida and rated at least A- in the then current edition of Best's Insurance Guide.
- F. Contractor hereby waives all subrogation rights of its insurance carriers in favor of the Indemnified Parties. This provision is intended to waive fully, and for the benefit of the Indemnified Parties, any rights or claims which might give rise to

a right of subrogation in favor of any insurance carrier.

- G. The City shall have the right to reasonably increase the amount or expand the scope of insurance to be maintained by Contractor hereunder from time to time.
- 12. **Title and Risk of Loss.** Title to and risk of loss in the Equipment shall remain with Contractor until the City's possession and acceptance of the Equipment in accordance with this Agreement.
- 13. **Clear Title.** Contractor shall deliver the Equipment to the City with clear title and free of all liens, claims, or encumbrances of any kind.
- 14. **Non-Exclusive Agreement.** This Agreement shall impose no obligation on the City to utilize Contractor for the purchase of all goods of this type which may be needed. This is not an exclusive agreement. The City specifically reserves the right to concurrently contract with other companies for similar goods if it deems such action to be in the City's best interest.
- 15. **Contract Adjustments.**
 - A. Either party may propose additions, deletions or modifications to the Scope of Work set forth in Appendix A or to the Specifications and Schedule ("Contract Adjustments") in whatever manner such party determines to be reasonably necessary for proper compliance with this Agreement. Proposals for Contract Adjustments shall be submitted to the non-requesting party in the form agreed to by the Parties. Contract Adjustments shall be effected through amendments to this Agreement made in accordance with this Agreement.
 - B. There shall be no increase in the Pricing or the Maximum Contract Price on account of any Contract Adjustment made necessary or appropriate as a result of the mismanagement, improper act, or other failure of Contractor or its employees, agents or subcontractors to properly perform their obligations and functions under this Agreement.
 - C. In the event Contractor proposes a Contract Adjustment and the City does not approve such Contract Adjustment, Contractor will continue to perform the original Scope of Work and comply with all other requirements of this Agreement in accordance with the terms and conditions of this Agreement.
 - D. Notwithstanding anything to the contrary contained in this Agreement, there shall be no increase in the Pricing or the Maximum Contract Price except pursuant to an amendment to this Agreement made in accordance with this Agreement.
- 16. **Notices.** Unless and to the extent otherwise provided in this Agreement, all notices, demands, requests for approvals and other communications which are required to be

given by either party to the other shall be in writing and shall be deemed given and delivered on the date delivered in person, upon the expiration of five (5) business days following the date mailed by registered or certified mail, postage prepaid, return receipt requested, or upon the date delivered by overnight courier (signature required) to the address provided below.

CITY:

City of St. Petersburg
Procurement and Supply Management Department
P. O. Box 2842
St. Petersburg, FL 33731
Phone: 727-893-7027
Attention: Louis Moore

CONTRACTOR:

Earthscape Play Inc.
7215 Wellington Road 86
Wallenstein, Ontario
Canada N0B 2S0
Phone: 519-804-6854
Attn: Nathan Schleicher

17. **Successors and Assigns.** This Agreement shall inure to the benefit of and be enforceable by and against the Parties, their heirs, personal representatives, successors, and assigns, including successors by way of reorganization.
18. **Compliance with Laws.** Contractor shall comply at all times with all federal, state, and local statutes, rules, regulations and ordinances, the federal and state constitutions, and the orders and decrees of lawful authorities having jurisdiction over the matter at issue (collectively, "Laws"), including but not limited to Florida Public Records laws. Contractor shall also comply with all applicable City policies and procedures.
19. **Non-appropriation.** The obligations of the City as to any funding required pursuant to this Agreement shall be limited to an obligation in any given year to budget, appropriate and pay from legally available funds, after monies for essential City services have been budgeted and appropriated, sufficient monies for the funding that is required during that year. Notwithstanding the foregoing, the City shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the City pursuant to this Agreement.
20. **Force Majeure.** In the event that either party hereto shall be delayed or hindered in or

prevented from the performance required hereunder by reason of strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God, or other reason of like nature not the fault of the party delayed in performing work or doing acts ("Permitted Delay"), such party shall be excused for the period of time equivalent to the delay caused by such Permitted Delay. Notwithstanding the foregoing, any extension of time for a Permitted Delay shall be conditioned upon the party seeking an extension of time delivering written notice of such Permitted Delay to the other party within ten (10) business days of the event causing the Permitted Delay.

21. **Due Authority.** Each party to this Agreement that is not an individual represents and warrants to the other party that (i) it is a duly organized, qualified and existing entity authorized to do business under the laws of the State of Florida, and (ii) all appropriate authority exists so as to duly authorize the person executing this Agreement to so execute the same and fully bind the party on whose behalf he or she is executing.
22. **City Consent and Action.**
 - A. For purposes of this Agreement, any required written permission, consent, acceptance, approval, or agreement by the City means the approval of the Mayor or his authorized designee, unless otherwise set forth in this Agreement or unless otherwise required to be exercised by City Council pursuant to the City Charter or applicable Laws.
 - B. For purposes of this Agreement, any right of the City to take any action permitted, allowed, or required by this Agreement may be exercised by the Mayor or his authorized designee, unless otherwise set forth in this Agreement or unless otherwise required to be exercised by City Council pursuant to the City Charter or applicable Laws.
23. **Assignment.** Contractor shall make no assignment of this Agreement without the prior written consent of the City. Any assignment of this Agreement contrary to this paragraph shall be void and shall confer no rights upon the assignee.
24. **Subcontract.** The hiring or use of outside services or subcontractors in connection with the performance of Contractor's obligations under this Agreement shall not be permitted without the prior written approval of the City, which approval may be withheld by the City in its sole and absolute discretion. Contractor shall promptly pay all subcontractors and suppliers.
25. **Relationship of Parties.** Nothing contained herein shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the Parties, it being understood and agreed that nothing contained herein, nor any acts of the Parties, shall be deemed to create any relationship between the Parties other than the relationship of independent contractors

and principals of their own accounts.

26. **No Construction against Preparer of Agreement.** This Agreement has been prepared by the City and reviewed by Contractor and its professional advisors. The City, Contractor and Contractor's professional advisors believe that this Agreement express their agreement and that they should not be interpreted in favor of either the City or Contractor or against the City or Contractor merely because of the Parties' efforts in preparing them.
27. **Severability.** Should any paragraph or portion of any paragraph of this Agreement be rendered void, invalid or unenforceable by any court of law for any reason, such determination shall not render void, invalid or unenforceable any other paragraph or portion of this Agreement.
28. **Governing Law and Venue.** The laws of the State of Florida shall govern this Agreement. Venue for any action brought in state court shall be in Pinellas County, St. Petersburg Division. Venue for any action brought in federal court shall be in the Middle District of Florida, Tampa Division, unless a division shall be created in St. Petersburg or Pinellas County, in which case the action shall be brought in that division. Each party waives any defense, whether asserted by motion or pleading, that the aforementioned courts are an improper or inconvenient venue. Moreover, the Parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction.
29. **Third Party Beneficiary.** Notwithstanding anything to the contrary contained in this Agreement, persons or entities not a party to this Agreement may not claim any benefit hereunder or as third party beneficiaries hereto.
30. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, whether oral or written, between them. Any conflicting terms or conditions or any terms or conditions related to attorneys' fees, disclaimer of warranties, or indemnification set forth by Contractor in the Other Documents, an invoice, or any other communication or document are void and of no effect.
31. **Amendment.** This Agreement may be modified only in a writing duly executed by both Parties.
32. **No Waiver.** No provision of this Agreement will be deemed waived by either party unless expressly waived in a writing signed by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this Agreement shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision, and the City's consent respecting any action by Contractor shall not constitute a waiver of the requirement for

obtaining the City's consent respecting any subsequent action.

33. **Headings.** The paragraph headings are inserted herein for convenience and reference only, and in no way define, limit, or otherwise describe the scope or intent of any provisions hereof.
34. **Survival.** All obligations and rights of any party arising during or attributable to the period prior to expiration or earlier termination of this Agreement, including but not limited to Contractor's warranty obligations and those obligations and rights related to indemnification, shall survive such expiration or earlier termination.
35. **Books and Records.** Contractor shall prepare in accordance with generally accepted accounting practice and shall keep, at the address for delivery of notices set forth in this Agreement, accurate books of account. All books and records with respect to this Agreement shall be kept by Contractor and shall be open to examination or audit by the City during the Term and for the retention periods set forth in the most recent General Records Schedule GS1-SL for State and Local Government Agencies. Nothing herein shall be construed to allow destruction of records that may be required to be retained longer by the statutes of the State of Florida.
36. **Public Records.**
 - A. Contractor shall (i) keep and maintain public records (as defined in Florida's Public Records law) required by the City to perform the Scope of Work pursuant to this Agreement; (ii) upon request from the City Clerk's Office, provide the City (at no cost to the City) with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided under Florida's Public Records law or other applicable Laws; (iii) ensure that public records in Contractor's possession that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by applicable Laws for the term and after the expiration or earlier termination of this Agreement; and (iv) after the expiration or earlier termination of this Agreement, at the City's request, either transfer, at no cost, to the City all public records in Contractor's possession within ten (10) days following the City's request and/or keep and maintain any public records required by the City to perform the Scope of Work pursuant to this Agreement. If Contractor transfers all public records to the City upon the expiration or earlier termination of this Agreement, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon the expiration or earlier termination of this Agreement, Contractor shall meet all applicable requirements for retaining public records in accordance with this Agreement and all applicable Laws. At the City's request, all public records stored electronically by Contractor shall be provided to the City in a

format approved by the City.

B. IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, AS TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY CLERK'S OFFICE (THE CUSTODIAN OF PUBLIC RECORDS) AT (727) 893-7448, CITY.CLERK@STPETE.ORG, OR 175 FIFTH ST. N., ST. PETERSBURG FL 33701.

C. Nothing contained herein shall be construed to affect or limit Contractor's obligations including but not limited to Contractor's obligations to comply with all other applicable Laws and to maintain books and records pursuant to this Agreement.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly authorized representatives on the day and date first above written.

EARTHSCAPE PLAY INC.:

WITNESSES

By: _____

By: _____

Print: _____

Print: _____

Title: _____

By: _____

Print: _____

CITY OF ST. PETERSBURG, FLORIDA: ATTEST

(SEAL)

By: _____
Louis Moore, CPPO, Director
Procurement & Supply Management

City Clerk (Designee)

Provisions of Contract Approved:

Approved as to Form and Content:

By: _____
Print: _____
Project Manager

City Attorney (Designee)
00370223

(Acknowledgment of Contractor)

State of _____)
County of _____) ss:
City of _____)

The foregoing Agreement was acknowledged before me this _____ day of _____,

by _____
(Name and Title)

of _____ (“Company”), on behalf of the Company. He/She is personally known to me or has produced _____, as identification and appeared before me at the time of notarization.

_____ warrants that he/she is authorized by the Company to execute the foregoing Agreement.

NOTARY PUBLIC:

(SEAL)

My commission expires: _____

RESOLUTION NO. _____

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF ST. PETERSBURG, FLORIDA (“CITY”) AND EARTHSCAPE PLAY INC. (“EARTHSCAPE”) TO DESIGN, FABRICATE AND OVERSEE THE INSTALLATION OF CHILDREN’S PLAYGROUND EQUIPMENT AT THE PIER APPROACH FOR AN AMOUNT NOT TO EXCEED \$700,000; AUTHORIZING THE CITY ATTORNEY’S OFFICE TO MAKE NON-SUBSTANTIVE CHANGES TO THE AGREEMENT; AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY TO EFFECTUATE THIS TRANSACTION; APPROVING A TRANSFER IN THE AMOUNT OF \$1,000,000 FROM THE UNAPPROPRIATED BALANCE OF THE DOWNTOWN REDEVELOPMENT FUND (1105) TO THE GENERAL CAPITAL IMPROVEMENT FUND (3001) TO PROVIDE FUNDING FOR THE PURCHASE AND INSTALLATION OF THE PIER PLAYGROUND EQUIPMENT AND OTHER PROJECT RELATED EXPENSES; AUTHORIZING A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF \$1,000,000 FROM THE INCREASE IN THE UNAPPROPRIATED BALANCE OF THE GENERAL CAPITAL IMPROVEMENT FUND (3001), RESULTING FROM THE ABOVE TRANSFER TO THE PIER APPROACH PROJECT (15377); AND PROVIDING AN EFFECTIVE DATE. (ENGINEERING PROJECT NO. 09227-119; ORACLE NO. 15377).

WHEREAS, the Pier Approach project has been designed with the capacity to add a destination children’s playground; and

WHEREAS, on March 23, 2017, the Procurement and Supply Management Department issued Request for Qualifications (“RFQ”) 6414 for Playground Equipment for the Pier Approach to select a playground equipment vendor to work with the Pier Approach design team to design, fabricate and install play equipment that would fit in with and complement the design of the Pier Approach; and

WHEREAS, the Procurement and Supply Management Department received nine (9) Statement of Qualifications (“SOQs”) in response to the RFQ; and

WHEREAS, the evaluation committee (“Committee”) (Raul Quintana, City Architect; Richard Craft, Recreation & Programming Superintendent, David Hugglestone, Senior Capital Project Coordinator, Lael Arango, Director of Education, Great Explorations, Kathy Gustafson-Hilton, Client Liaison & Creative Thinking Facilitator, Hands On! Studio) met

on May 22, 2017 to conduct an initial review of the SOQs and ranked the top four most qualified firms as follows 1) Dynamo Industries (“Dynamo”), 2) Earthscape Play Inc. (“Earthscape”), 3) Kompan, Inc. (“Kompan”), and 4) Landscape Structures, Inc. (“Landscape Structures”), and the Committee moved to invite the four firms to make oral presentations on June 22, 2017; and

WHEREAS, the Committee heard oral presentations on June 22, 2017 and ranked Earthscape as the most qualified firm to work with the Pier Approach design team to design, fabricate and oversee the installation of playground equipment that would fit in with and complement the design of the Pier Approach; and

WHEREAS, the City wishes to contract with Earthscape to work with the Pier Approach design team to design, fabricate and oversee the installation of playground equipment that would fit in with and complement the design of the Pier Approach; and

WHEREAS, on August 24, 2017, City Council approved Ordinance No. 292-H adopting amendments to the Intown Redevelopment Plan (IRP) to delete reference to “mixed-use transportation facility” and reallocate its \$14,000,000 in allowable project cost that can be funded by Tax Increment Financing (TIF) such that up to \$10 million may be spent on the enhancements to the “Municipal Pier Project” and/or “Enhancements to the Downtown Waterfront Master Plan Improvements in the Pier District”; and

WHEREAS, the following funding is needed to complete this project and other project related expenses: i) a transfer in the amount of \$1,000,000 from the unappropriated balance of the downtown redevelopment fund (1105) to the general capital improvement fund (3001) to provide funding for the purchase and installation of the pier playground equipment ii) a supplemental appropriation in the amount of \$1,000,000 from the increase in the unappropriated balance of the general capital improvement fund (3001), resulting from this transfer to the pier approach project (15377).

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of St. Petersburg, Florida that the agreement between the City of St. Petersburg, Florida, (“City”) and Earthscape Play Inc. (“Earthscape”) to design, fabricate and oversee the installation of children’s playground equipment at the Pier Approach and other project related expenses for an amount not to exceed \$700,000 is hereby approved.

BE IT FURTHER RESOLVED that the City Attorney is authorized to make non-substantive changes to the agreement.

BE IT FURTHER RESOLVED that the Mayor, or his designee is authorized to execute the agreement and all other documents necessary to effectuate this transaction.

BE IT FURTHER RESOLVED by the City Council of the City of St. Petersburg, Florida that there is hereby approved the following transfer from the unappropriated balance of the Downtown Redevelopment Fund (1105) to the General Capital Improvement Fund (3001):

Downtown Redevelopment Fund (1105)

Transfer to: General Capital Improvement Fund (3001) \$1,000,000

BE IT FURTHER RESOLVED by the City Council of the City of St. Petersburg, Florida that there is hereby approved the following supplemental appropriation from the increase in the unappropriated balance of the General Capital Improvement Fund (3001):

General Capital Improvement Fund (3001)

Transfer to: Pier Approach Project (15377) \$1,000,000

This Resolution shall become effective immediately upon its adoption.

Approved by:

Legal Department

By: (City Attorney or Designee)

00370032

Approved by:

Brijesh Prayman, P.E., ENV SP

Engineering Director

Budget Director