STATE OF NEBRASKA CONTRACT AWARD

PAGE	ORDER DATE
1 of 1	12/22/23
BUSINESS UNIT	BUYER
9000	CLINTON PAUL (AS)

State Purchasing Bureau
1526 K Street, Suite 130
Lincoln, Nebraska 68508

Telephone: (402) 471-6500
Fax: (402) 471-2089

CONTRACT NUMBER
15910 OC

VENDOR NUMBER: 2601740

VENDOR ADDRESS:

PLAYPOWER LT FARMINGTON INC
PO BOX 734155
DALLAS TX 75373-4155

AN AWARD HAS BEEN MADE TO THE CONTRACTOR NAMED ABOVE FOR THE FURNISHING OF MATERIALS AND/OR SERVICES AS LISTED BELOW FOR THE PERIOD:

JANUARY 31, 2024 THROUGH DECEMBER 31, 2024

NO ACTION ON THE PART OF THE CONTRACTOR NEEDS TO BE TAKEN AT THIS TIME. ORDERS FOR THE MATERIALS AND/OR SERVICES WILL BE MADE AS NEEDED BY THE VARIOUS AGENCIES OF THE STATE.

THIS CONTRACT IS NOT AN EXCLUSIVE CONTRACT TO FURNISH THE MATERIALS AND/OR SERVICES SHOWN BELOW, AND DOES NOT PRECLUDE THE PURCHASE OF SIMILAR MATERIALS AND/OR SERVICES FROM OTHER SOURCES.

THE STATE RESERVES THE RIGHT TO EXTEND THE PERIOD OF THIS CONTRACT BEYOND THE TERMINATION DATE WHEN MUTUALLY AGREEABLE TO THE CONTRACTOR AND THE STATE OF NEBRASKA.

Awarded from NASPO MA# PO-107000-00015853

Contract to supply and deliver Parks and Recreation Equipment and Installation to the State of Nebraska as per the attached specifications for the contract period January 31, 2024 through December 31, 2024.
For the File - This ITB and Contract are bid and awarded by The State of Oregon. All backup bids, etc. are retained by The State of Oregon.
The PlayPower Contract period was effective February 7, 2023 The NASPO Contract can be found at https://naspovaluepoint.org/portfolio/parks-and-recreation-equipment-and-installation-2023-2027/playpower-inc/

The NASPO ValuePoint Contrat can be found at https://www.naspovaluepoint.org

Vendor Contact: Todd Brinker
Phone: 704-949-1600
E-Mail: todd.brinker@playpower.com

(BT 01/22/24)

Line	Description	Estimated Quantity	Unit of Measure	Unit Price
1	PLAY EQUIPMENT	1,000,000.0000	$	1.0000

DS
RT

DocuSigned by:
Clinton Paul
13CF80A3E0C0498...
BUYER

DocuSigned by:
Amara Block
4CFF2711162A4A2...
MATERIEL ADMINISTRATOR

PARTICIPATING ADDENDUM

Master Agreement # PO-107000-00015853

Contractor: PlayPower, Inc
Participating Entity: State of Nebraska

Parks and Recreation Equipment and Installation

Administered by the State of Oregon (hereinafter "Lead State")

MASTER AGREEMENT
PlayPower, Inc
(Hereinafter "Contractor")

And

State of Nebraska
(Hereinafter "Participating State/Entity")

I. GENERAL

A. SCOPE
This addendum covers the Parks and Recreation Equipment and Installation led by the State of Nebraska for use by state agencies and other entities located in the Participating State/Entity authorized by that state's statutes to utilize state/entity contracts with the prior approval of the state's chief procurement official.

B. PARTICIPATING STATE/ENTITY MODIFICATIONS
The following changes are modifying or supplementing the Master Agreement terms and conditions.

C. CONTRACT PERIOD: January 31 , 2024 through December 31, 2024

D. NEGOTIATIONS
Contractor should read the Terms and Conditions and either accept or provide alternative language for each clause. Please use the Track Change Function. The Contractor should also provide an explanation of why the Contractor provided alternate language. The State reserves the right to negotiate proposed alternative language. If the State and Contractor fail to agree on the final Terms and Conditions, the State reserves the right to withdraw the offer.

If a conflict or ambiguity arises after the Contract/Participating Addendum have been negotiated and agreed to, the Contract/Participating Addendum shall be interpreted as follows:

1. If only one Party has a particular clause then that clause shall control;
2. If both Parties have a similar clause, but the clauses do not conflict, the clauses shall be read together;
3. If both Parties have a similar clause, but the clauses conflict, the State's clause shall control.

E. DOCUMENTS/ORDER OF PRECEDENCE
The Participating Addendum shall incorporate the following documents:

1. Participating Addendum
2. Master Agreement: Oregon PO-107000-00015853
3. Amendments/Addendums.

By incorporation of the Master Agreement in the Participating Addendum, the Master Agreement shall be read as being entered into by the State of Nebraska and interpreted consistent with Nebraska state law. These documents constitute the entirety of the Participating Addendum.

Unless otherwise specifically stated in a future Participating Addendum amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document:

a. Amendment to the executed Participating Addendum or with the most recent dated amendment having the highest priority,
b. Executed Participating Addendum, and any attached Addenda,
c. Executed Addendum,
d. Statement of Work,

Any ambiguity or conflict in the Participating Addendum discovered after execution, not otherwise addressed herein, shall be resolved in accordance with the rules of Contract interpretation as established in the State of Nebraska.

F. NOTIFICATION

Contractor and State shall identify the Contract manager who shall serve as the point of contact for the executed Contract/Participating Addendum.

Communications regarding the executed Contract/Participating Addendum shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth below, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or three (3) calendar days following deposit in the mail.

Either party may change its address for notification purposes by giving notice of the change, and setting forth the new address and an effective date.

II. TERMS AND CONDITIONS

A. GENERAL

The Participating Addendum shall incorporate the following documents:

1. Participating Addendum;
2. Master Agreement; and,
3. Amendments/Addendums.

These documents constitute the entirety of the Participating Addendum.

Unless otherwise specifically stated in a future contract amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Participating Addendum having the highest priority, 2) the Master Agreement and any attached Addenda and/or Amendments, and 3) the Master Agreement.

Any ambiguity or conflict in the Participating Addendum discovered after execution, not otherwise addressed herein, shall be resolved in accordance with the rules of Participating Addendum interpretation as established by the State of Nebraska.

B. PROCURING OFFICE AND COMMUNICATION WITH STATE STAFF

Procurement responsibilities related to the resulting contract reside with the State Purchasing Bureau (SPB). The Point of Contact (POC) for the procurement is as follows:

Name: **Clinton Paul**, Procurement Contracts Officer (PCO)
Agency: State Purchasing Bureau
Address: 1526 K Street
Lincoln, NE 68508

Telephone: 402-471-6500

E-Mail: as.materielpurchasing@nebraska.gov

C. SECRETARY OF STATE/TAX COMMISSIONER REGISTRATION REQUIREMENTS (Statutory)

All Contractors must be authorized to transact business in the State and comply with all Nebraska Secretary of State Registration requirements. The Supplier who is the recipient of an Intent to Award will be required to certify that it has complied and produce a true and correct copy of its current (within 90 calendar days of the intent to award) Certificate or Letter of Good Standing, or in the case of a sole proprietorship, provide written documentation of sole proprietorship and the United States Citizenship Attestation Form, available at: United-States-Citizenship-Attestation-Form.pdf (ne.gov).

D. PCO REPRESENTATIVE

The State reserves the right to appoint a PCO's Representative to manage [or assist the PCO in managing] the contract on behalf of the State. The PCO's Representative will be appointed in writing, and the appointment document will specify the extent of the PCO's Representative authority and responsibilities. If a PCO's Representative is appointed, the Contractor will be provided a copy of the appointment document, and is expected to cooperate accordingly with the PCO's Representative. The

PCO's Representative has no authority to bind the State to a contract, amendment, addendum, or other change or addition to the contract.

E. GOVERNING LAW (STATUTORY)

Notwithstanding any other provision of this Participating Addendum, or any Amendment or Addenda entered into contemporaneously or at a later time, the parties understand and agree that:

1. The State of Nebraska is a sovereign state and its authority to contract is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation;
2. This contract will be interpreted and enforced under the laws of the State of Nebraska;
3. Any action to enforce the provisions of this contract must be brought in the State of Nebraska per state law;
4. The person signing this contract on behalf of the State of Nebraska does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations;
5. The indemnity, limitation of liability, remedy, and other similar provisions of the final contract, if any, are entered into subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity; and,
6. All terms and conditions of the final contract, including but not limited to the clauses concerning third-party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy, or other similar provisions of the final contract are entered into specifically subject to the State's Constitution, statutes, common law, regulations, and sovereign immunity.

The Parties must comply with all applicable local, state, and federal laws, ordinances, rules, orders, and regulations.

F. BEGINNING OF WORK

The Contractor shall not commence any billable work until a valid Participating Addendum has been fully executed by the State and the successful Contractor. The Contractor will be notified in writing when work may begin.

G. AMENDMENT

This Participating Addendum may be amended by the Participating Entity per documentation provided by PlayPower, Inc..

H. SUBSTITUTIONS

No change shall be implemented by the Contractor until approved by the PlayPower, Inc, and the Master Agreement and resulting Contract is amended to reflect the change and associated costs, if any.

Contractor will not substitute any item that has been awarded without prior written approval of the PlayPower, Inc and SPB

I. VENDOR PERFORMANCE REPORT(S)

The State may document any instance(s) of products or services delivered or performed which exceed or fail to meet the terms of the purchase order, contract, and/or solicitation specifications. The State Purchasing Bureau may contact the Contractor regarding any such report. Contractor performance report(s) will become a part of the permanent record of the Contractor.

J. NOTICE OF POTENTIAL CONTRACTOR BREACH

If Contractor breaches the contract or anticipates breaching the contract, the Contractor shall immediately give written notice to the State. The notice shall explain the breach or potential breach, a proposed cure, and may include a request for a waiver of the breach if so desired. The State may, in its discretion, temporarily or permanently waive the breach. By granting a waiver, the State does not forfeit any rights or remedies to which the State is entitled by law or equity, or pursuant to the provisions of the contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

K. BREACH

Either Party may terminate the contract, in whole or in part, if the other Party breaches its duty to perform its obligations under the contract in a timely and proper manner. Termination requires written notice of default and a 30-calendar day (or longer at the non-breaching Party's discretion considering the gravity and nature of the default) cure period. Allowing time to cure a failure or breach of contract does not waive the right to immediately terminate the contract for the same or different contract breach which may occur at a different time.

In case of breach by the Contractor, the State may, without unreasonable delay, make a good faith effort to make a reasonable purchase or contract to purchased goods in substitution of those due from the Contractor. The State may recover from the Contractor as damages the difference between the costs of covering the breach. Notwithstanding any clause to the contrary, the State may also recover the contract price together with any incidental or consequential damages defined in UCC Section 2-715, but less expenses saved in consequence of Contractor's breach OR in case of default of the Contractor, the State may contract the service from other sources and hold the Contractor responsible for any excess cost occasioned thereby.

The State's failure to make payment shall not be a breach, and the Contractor shall retain all available statutory remedies. (See Indemnity - Self-Insurance and Payment)

L. NON-WAIVER OF BREACH
The acceptance of late performance with or without objection or reservation by a Party shall not waive any rights of the Party nor constitute a waiver of the requirement of timely performance of any obligations remaining to be performed.

M. SEVERABILITY
If any term or condition of the Participating Addendum is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Participating Addendum did not contain the provision held to be invalid or illegal.

N. INDEMNIFICATION

1. GENERAL
The Contractor agrees to defend, indemnify, and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State for personal injury, death, or property loss or damage, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Contractor, its employees, Sub Contractors, consultants, representatives, and agents, resulting from this Participating Addendum, except to the extent such Contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

2. PERSONNEL
The Contractor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel, including subcontractor's and their employees, provided by the Contractor.

3. SELF-INSURANCE (Statutory)
The State is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the provisions of this agreement, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 through 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this agreement to the extent provided by law.

O. ASSIGNMENT, SALE, OR MERGER
The PlayPower, Inc may assign the Participating Addendum. Such agreement shall not be unreasonably withheld.

P. CONTRACTING WITH OTHER POLITICAL SUB-DIVISIONS OF THE STATE OR ANOTHER STATE
The Contractor shall allow Agencies, as defined in Neb. Rev. Stat. § 81-145, to use this Participating Addendum. The Terms and Conditions, including price, of the Participating Addendum may not be amended.

The Contractor shall allow political subdivisions to use this Participating Addendum. The terms and conditions, including price, of this Participating Addendum shall apply. The State of Nebraska shall not be contractually or otherwise obligated or liable under any Participating Addendum entered into pursuant to this clause.

Q. FORCE MAJEURE
Neither party shall be liable for any costs or damages, or for default resulting from its inability to perform any of its obligations under the Participating Addendum due to a natural or man-made event outside the control and not the fault of the affected party ("Force Majeure Event"). The Party so affected shall immediately make a written request for relief to the other party and shall have the burden of proof to justify the request. The other Party may grant the relief requested; relief may not be unreasonably withheld. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event.

R. EARLY TERMINATION
The contract may be terminated as follows:

1. The State and the Contractor, by mutual written agreement, may terminate the contract at any time.

2. The State, at its sole discretion, may terminate the contract for any reason upon 30 calendar day's written notice to the Contractor. Such termination shall not relieve the Contractor of warranty or other service obligations incurred under the terms of the contract. In the event of termination, the Contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.

3. The State may terminate the contract immediately for the following reasons:

a. if directed to do so by statute;

b. Contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;

c. a trustee or receiver of the Contractor or of any substantial part of the Contractor's assets has been appointed by a court;

d. fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its Contractor, its employees, officers, directors, or shareholders;

e. an involuntary proceeding has been commenced by any party against the Contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) calendar days; or (ii) the Contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the Contractor has been decreed or adjudged a debtor;

f. a voluntary petition has been filed by the Contractor under any of the chapters of Title 11 of the United States Code;

g. Contractor intentionally discloses confidential information;

h. Contractor has or announces it will discontinue support of the deliverable; and,

i. In the event funding is no longer available.

III. CONTRACTOR DUTIES

A. INDEPENDENT CONTRACTOR / OBLIGATIONS

It is agreed that the Contractor is an independent Contractor and that nothing contained herein is intended or should be construed as creating or establishing a relationship of employment, State of Nebraska, or a partnership.

The Contractor is solely responsible for fulfilling the Participating Addendum. The Contractor or the Contractor's representative shall be the sole point of contact regarding all contractual matters.

The Contractor shall secure, at its own expense, all personnel required to perform the services under the Participating Addendum. The personnel the Contractor uses to fulfill the Participating Addendum shall have no contractual or other legal relationship with the State; they shall not be considered employees of the State and shall not be entitled to any compensation, rights, or benefits from the State, including but not limited to, tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits.

By-name personnel commitments made in the Contractor's bid shall not be changed without the prior written approval of the State. Replacement of these personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

The Contractor warrants that all persons assigned to the project shall be employees of the Contractor or a Subcontractor and shall be fully qualified to perform the work required herein. Personnel employed by the Contractor or a Subcontractor to fulfill the terms of the Participating Addendum shall remain under the sole direction and control of the Contractor or the Subcontractor respectively.

With respect to its employees, the Contractor agrees to be solely responsible for the following:

1. Any and all pay, benefits, and employment taxes and/or other payroll withholding;
2. Any and all vehicles used by the Contractor's employees, including all insurance required by state law;
3. Damages incurred by Contractor's employees within the scope of their duties under the Participating Addendum;
4. Maintaining Workers' Compensation and health insurance that complies with state and federal law and submitting any reports on such insurance to the extent required by governing law;
5. Determining the hours to be worked and the duties to be performed by the Contractor's employees; and,
6. All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination alleged against the Contractor, its officers, agents, or Subcontractors or subcontractor's employees).

If the Contractor intends to utilize any Subcontractor, the Sub Contractor's level of effort, tasks, and time allocation must be clearly defined in the Contractor's bid. The Contractor shall agree that it will not utilize any Subcontractors not specifically included in its bid in the performance of the Participating Addendum without the prior written authorization of the State.

The State reserves the right to require the Contractor to reassign or remove from the project any Contractor or Subcontractor employee.

Contractor shall insure that the terms and conditions contained in any Participating Addendum with a Subcontractor does not conflict with the terms and conditions of this Participating Addendum.

The Contractor shall include a similar provision, for the protection of the State, in the Participating Addendum with any Subcontractor engaged to perform work on this Participating Addendum.

B. EMPLOYEE WORK ELIGIBILITY STATUS

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing work within the State. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent Federal program designated by the United States Department of Homeland Security or other Federal and State of Nebraska authorization to verify the work eligibility status of an employee.

C. COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION (Statutory)

The Contractor shall comply with all applicable local, State, and Federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits Contractors of the State, and their Sub Contractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensation, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin (Neb. Rev. Stat. §§ 48-1101 through 48-1125). The Contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of Participating Addendum. The Contractor shall insert a similar provision in all Subcontracts for goods or services to be covered by any Participating Addendum resulting from this ITB.

D. COOPERATION WITH OTHER CONTRACTORS
Contractor may be required to work with or in close proximity to other Contractors or individuals that may be working on the same or different projects. The Contractor shall agree to cooperate with such other Contractors or individuals and shall not commit or permit any act which may interfere with the performance of work by any other Contractor or individual. Contractor is not required to compromise Contractor's intellectual property or proprietary information unless expressly required to do so by this Participating Addendum.

E. PERMITS, REGULATIONS, LAWS
The Participating Addendum price shall include the cost of all royalties, licenses, permits, and approvals, whether arising from patents, trademarks, copyrights or otherwise, that are in any way involved in the Participating Addendum. The Contractor shall obtain and pay for all royalties, licenses, and permits, and approvals necessary for the performance of the Participating Addendum. The Contractor must guarantee that it has the full legal right to the materials, supplies, equipment, software, and other items used to execute this Participating Addendum.

F. INSURANCE REQUIREMENTS
The Contractor shall throughout the term of the Participating Addendum maintain insurance as specified herein and provide the State a current Certificate of Insurance/Accord Form (COI) verifying the coverage. The Contractor shall not commence work on the Participating Addendum until the insurance is in place. If Contractor subcontracts any portion of the Participating Addendum the Contractor must, throughout the term of the Participating Addendum, either:

1. Provide equivalent insurance for each subcontractor and provide a COI verifying the coverage for the subcontractors;
2. Require each subcontractor to have equivalent insurance and provide written notice to the State that the Contractor has verified that each subcontractor has the required coverage; or,
3. Provide the State with copies of each subcontractor's Certificate of Insurance evidencing the required coverage.

The Contractor shall not allow any Subcontractor to commence work until the Subcontractor has equivalent insurance. The failure of the State to require a COI, or the failure of the Contractor to provide a COI or require subcontractor insurance shall not limit, relieve, or decrease the liability of the Contractor hereunder.

In the event that any policy written on a claims-made basis terminates or is canceled during the term of the contract or with in three (3) years of termination or expiration of the contract, the Contractor shall obtain an extended discovery or reporting period, or a new insurance policy, providing coverage required by this contract for the term of the contract and three (3) years following termination or expiration of the contract.

If by the terms of any insurance a mandatory deductible is required, or if the Contractor elects to increase the mandatory deductible amount, the Contractor shall be responsible for payment of the amount of the deductible in the event of a paid claim.

Notwithstanding any other clause in this Contract, the State may recover up to the liability limits of the insurance policies required herein.

4. WORKERS' COMPENSATION INSURANCE
The Contractor shall take out and maintain during the life of this contract the statutory Workers' Compensation and Employer's Liability Insurance for all of the contactors' employees to be engaged in work on the project under this contract and, in case any such work is sublet, the Contractor shall require the Subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. The policy shall include a waiver of subrogation in favor of the State. The COI shall contain the mandatory COI subrogation waiver language found hereinafter. The amounts of such insurance shall not be less than the limits stated hereinafter. For employees working in the State, the policy must be written by an entity authorized by the State of Nebraska Department of Insurance to write Workers' Compensation and Employer's Liability Insurance for Nebraska employees.

5. COMMERCIAL GENERAL LIABILITY INSURANCE AND COMMERCIAL AUTOMOBILE LIABILITY INSURANCE
The Contractor shall take out and maintain during the life of this contract such Commercial General Liability Insurance and Commercial Automobile Liability Insurance as shall protect Contractor and any Subcontractor performing work covered by this contract from claims for damages for bodily injury, including death, as well as from claims for property damage, which may arise from operations under this contract, whether such operation be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by either of them, and the amounts of such insurance shall not be less than limits stated hereinafter.

The Commercial General Liability Insurance shall be written on an occurrence basis, and provide Premises/Operations, Products/Completed Operations, Independent Contractors, Personal Injury, and Contractual Liability coverage. The policy shall include the State, and others as required by the contract documents. This policy shall be primary, and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory. The COI shall contain the mandatory COI liability waiver language found hereinafter. The Commercial Automobile Liability Insurance shall be written to cover all Owned, Non-owned, and Hired vehicles.

REQUIRED INSURANCE COVERAGE (COVERAGES AND THE AMOUNT OF COVERAGE SHOULD BE ADJUSTED BASED ON NATURE OF THE CONTRACT / SERVICE / COMMODITY / RISK	
BUILDERS RISK	
All Risk Insurance – Cost of the Job including Soft Costs	
COMMERCIAL GENERAL LIABILITY	
General Aggregate	$2,000,000
Products/Completed Operations Aggregate	$2,000,000
Personal/Advertising Injury	$1,000,000 per occurrence
Bodily Injury/Property Damage	$1,000,000 per occurrence
Fire Damage	$50,000 any one fire
Medical Payments	$10,000 any one person
Damage to Rented Premises	$300,000 each occurrence
Contractual	Included
XCU Liability (Explosion, Collapse, and Underground Damage)	Included
Independent Contractors	Included
Abuse & Molestation	Included
If higher limits are required, the Umbrella/Excess Liability limits are allowed to satisfy the higher limit.	
WORKER'S COMPENSATION	
Employers Liability Limits	$500K/$500K/$500K
Statutory Limits- All States	Statutory - State of Nebraska
USL&H Endorsement	Statutory
Voluntary Compensation	Statutory
MANDATORY COI SUBROGATION WAIVER LANGUAGE	
"Workers' Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska."	
MANDATORY COI LIABILITY WAIVER LANGUAGE	
"Commercial General Liability & Commercial Automobile Liability policies shall be primary, and any insurance or self-insurance carried by the State shall be considered secondary and non-contributory. State of Nebraska shall be included as additionally insured."	

If the mandatory COI subrogation waiver language or mandatory COI liability waiver language on the COI states that the waiver is subject to, condition upon, or otherwise limit by the insurance policy a copy of the relevant sections of the policy must be submitted with the COI so the State can review the limitations imposed by the insurance policy.

1. EVIDENCE OF COVERAGE

The Contractor should furnish the State, prior to beginning work and upon, a certificate of insurance coverage complying with the above requirements to the attention of Buyer identified on this Participating Addendum.

These certificates or the cover sheet shall reference the ITB number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration, and amounts and types of coverage afforded. If the State is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.

Reasonable notice of cancellation of any required insurance policy must be submitted to Administrative Services State Purchasing Bureau when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

2. DEVIATIONS

The insurance requirements are subject to limited negotiation. Negotiation typically includes, but is not necessarily limited to, the correct type of coverage, necessity for Workers' Compensation, and the type of automobile coverage carried by the Contractor.

G. NOTICE OF POTENTIAL CONTRACTOR BREACH

If Contractor breaches the contract or anticipates breaching the contract the Contractor shall immediately give written notice to the State. The notice shall explain the breach or potential breach and may include a request for a waiver of the breach if so desired. The State may, at its discretion, temporarily or permanently waive the breach. By granting a temporary waiver, the State does not forfeit any rights or remedies to which the State is entitled by law or equity, or pursuant to the provisions of the contract. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

H. ANTITRUST

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

I. CONFLICT OF INTEREST

By submitting a bid, Contractor certifies that there does not now exist a relationship between the Contractor and any person or entity which is or gives the appearance of a conflict of interest related to this ITB or project.

The Contractor certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the delivery of its goods hereunder or which creates an actual or an appearance of conflict of interest.

The Contractor certifies that it will not employ any individual known by Contractor to have a conflict of interest.

The Parties shall not knowingly, for a period of two (2) years after execution of the contract, recruit or employ any employee or agent of the other Party who has worked on the ITB or project, or who had any influence on decisions affecting the ITB or project.

J. STATE PROPERTY

The Contractor shall be responsible for the proper care and custody of any State-owned property which is furnished for the Contractor's use during the performance of the contract. The Contractor shall reimburse the State for any loss or damage of such property; normal wear and tear is expected.

K. SITE RULES AND REGULATIONS

The Contractor shall use its best efforts to ensure that its employees, agents, and Subcontractors comply with site rules and regulations while on State premises. If the Contractor must perform on-site work outside of the daily operational hours set forth by the State, it must make arrangements with the State to ensure access to the facility and the equipment has been arranged. No additional payment will be made by the State on the basis of lack of access, unless the State fails to provide access as agreed to in writing between the State and the Contractor.

L. ADVERTISING

The Contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its goods are endorsed or preferred by the State. Any publicity releases pertaining to the project shall not be issued without prior written approval from the State.

M. NEBRASKA TECHNOLOGY ACCESS STANDARDS (Statutory)

Contractor shall review the Nebraska Technology Access Standards, found at http://nitc.nebraska.gov/standards/2-201.html and ensure that products and/or goods provided under the contract are in compliance or will comply with the applicable standards to the greatest degree possible. In the event such standards change during the Contractor's performance, the State may create an amendment to the contract to request the contract comply with the changed standard at a cost mutually acceptable to the parties.

N. DISASTER RECOVERY/BACK UP PLAN

The Contractor shall have a disaster recovery and back-up plan, of which a copy should be provided upon request to the State, which includes, but is not limited to equipment, personnel, facilities, and transportation, in order to continue delivery of goods as specified under the specifications in the contract in the event of a disaster.

O. ENERGY STAR PRODUCTS

The contractor must provide products that earn the Energy Star and meet the Energy Star specifications for energy efficiency. The contractor is encouraged to visit **https://www.energystar.gov/** for complete product specifications and updated lists of qualifying products.

P. DRUG POLICY

Contractor certifies it maintains a drug free workplace environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

Q. WARRANTY

Despite any clause to the contrary, the Contractor represents and warrants that its services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Contract. For any breach of this warranty, the Contractor shall, for a period of One (1) year from performance of the service, perform the services again, at no cost to Customer, or if Contractor is unable to perform the services as warranted, Contractor shall reimburse Customer the fees paid to Contractor for the unsatisfactory services. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

IV. PAYMENT

A. PROHIBITION AGAINST ADVANCE PAYMENT

Neb. Rev. Stat. §§ 73-501 through 73-509 states," . . . payments shall not be made until contractual deliverable(s) are received and accepted by the State".

B. TAXES (Statutory)

The State is not required to pay taxes and assumes no such liability as a result of this solicitation. The Contractor may request a copy of the Nebraska Department of Revenue, Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption, Form 13 for their records. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

C. INVOICES

Invoices for payments must be submitted by the Contractor to the State of Nebraska requesting the services with sufficient detail to support payment. The Terms and Conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

D. INSPECTION AND APPROVAL

Final inspection and approval of all work required under the contract shall be performed by the designated State officials.

The State and/or its authorized representatives shall have the right to enter any premises where the Contractor or Subcontractor duties under the contract are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

If a simple inspection of the goods would reveal nonconformity, notice of nonconformity should be provided to the Contractor as soon as reasonably practical, but not to exceed thirty (30) days from receipt of goods. This includes visual inspection of product to ensure packaging is not damaged, dented or compromised.

E. PAYMENT (Statutory)

State will render payment to Contractor when the terms and conditions of the contract and specifications have been satisfactorily completed on the part of the Contractor as solely determined by the State. (Neb. Rev. Stat. Section § 73-506(1)). The State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any services provided by the Contractor prior to the Effective Date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.

F. LATE PAYMENT (Statutory)

The Contractor may charge the responsible agency interest for late payment in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §§ 81-2401 through 81-2408).

G. SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (Statutory)

The State's obligation to pay amounts due on the Contract beyond the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. The State will give the Contractor written notice 30 calendar days prior to the effective date of termination. All obligations of the State to make payments after the termination date will cease. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

H. RIGHT TO AUDIT (Statutory)

The State shall have the right to audit the Contractor's performance of this contract upon a thirty (30) day written notice. Contractor shall utilize generally accepted accounting principles, and shall maintain the accounting records, and other records and information relevant to the contract (Information) to enable the State to audit the contract (Neb. Rev. Stat. § 84-304 et seq.). The State may audit, and the Contractor shall maintain the information during the term of the contract and for a period of five (5) years after the completion of this contract or until all issues or litigation are resolved, whichever is later. The Contractor shall make the Information available to the State at Contractor's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the Contractor so elects, the Contractor may provide electronic or paper copies of the Information. The State reserves the right to examine, make copies of, and take notes on any Information relevant to this contract, regardless of the form or the Information, how it is stored, or who possesses the Information. In no circumstances will Contractor be required to create or maintain documents not kept in the ordinary course of Contractor's business operations, nor will Contractor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to Contractor.

The Parties shall pay their own costs of the audit unless the audit finds a previously undisclosed overpayment by the State. If a previously undisclosed overpayment exceeds one-half of one percent percent (5%) of the total contract billings, or if fraud, material misrepresentations, or non-performance is discovered on the part of the Contractor, the Contractor shall reimburse the State for the total costs of the audit. Overpayments and audit costs owed to the State shall be paid within 90 days of written notice of the claim. The Contractor agrees to correct any material weaknesses or condition found as a result of the audit.

I. QUARTERLY UTILIZATION REPORTS The Contractor shall provide, to the State of Nebraska, Quarterly Utilization Reports.

The Quarterly Utilization Reports shall be in **EXCEL format** and sent via email to:

as.materielpurchasing@nebraska.gov

The Quarterly Utilization Reports shall provide, at a minimum, the following information pertaining to the Utilization of contract 15910 OC:

1. Contractor Name;
2. Nebraska Contract number 15910 OC;
3. Nebraska Purchase Order number;
4. Contractor Purchase Order number;
5. Commodity Description;
6. Quantity;
7. Price; and,
8. Agency/Political Subdivision Name.

The Quarterly Utilization Report Due Dates are as follows:

Period End Dates	Report Due Dates
December 31	January 31
March 31	April 30
June 30	July 31
September 30	October 31

J. UTILIZATION REPORTS Upon request from the State of Nebraska the Contractor shall provide the Utilization Reports.

The provided Utilization Reports shall be in **EXCEL format** and sent to SPB via email to:

as.materielpurchasing@nebraska.gov

The Utilization Reports shall provide, at a minimum, the following information pertaining to the Utilization of contract 15910 OC:

1. Contractor Name;
2. Nebraska Contract number 15910 OC;
3. Nebraska Purchase Order number;
4. Contractor Purchase Order number;
5. Commodity Description;
6. Quantity;
7. Price; and,
8. Agency/Political Subdivision Name.

Utilization Reports should be provided to the State of Nebraska within five (5) business days after request.

K. QUARTERLY ADMINISTRATIVE FEE(S) / REBATE(S)
Quarterly Administration Fee(s) / Rebate(s) will be made payable to the State of Nebraska in the amount .0025 PERCENTAGE (.25%) of the net sales (net of any returns, credits, or adjustments under this Addendum).

The Contractor's < PlayPower, Inc pricing to the State shall not be adjusted to offset the Quarterly Administrative Fee(s) / Rebate(s).

The Contractor agrees to provide Quarterly Administrative Fee(s) / Rebates(s) in the form of a check by the following Due Dates:

Period End Due Dates	**Fee(s) / Rebate(s) Due Dates**
December 31	January 31
March 31	April 30
June 30	July 31
September 30	October 31

L. QUARTERLY ADMINISTRATIVE FEE(S) / REBATE(S)

REMITTANCE LOCATION
All Administrative Fees/Rebates will be sent to the following address:

State Purchasing Bureau
c/o Central Finance, Administrative Services
1526 K Street
Lincoln, NE 68508

IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date of execution by both parties below.

Participating Entity: State of Nebraska	Contractor: PlayPower, Inc
Signature: DocuSigned by: Amara Block 4CFF2711162A4A2...	Signature: DocuSigned by: W. Todd Brinker E9A8A7926322400...
Printed Name: Amara Block	Printed Name: W. Todd Brinker
Title: Chief Procurement Officer	Title: SVP, Commercial Growth
Date: 2/2/2024	Date: 1/19/2024

For questions regarding NASPO ValuePoint Participating Addendums, please contact the Cooperative Contract Coordinator team atccc@naspovaluepoint.org.

[Please email fully executed PDF copy of this document to
PA@naspovaluepoint.org
to support documentation of participation and posting in appropriate data bases.]

Amendment No. 2 to PO-10700-00015853

This is Amendment No. 2 to PO-10700-00015853, dated February 7, 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 PlayPower, Inc ("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 3 Term of Master Agreement.

The Master Agreement is amended as follows:

1. Section 3 Term of Master Agreement is amended as follows (new language is indicated by **<u>underlining and bold</u>** and deleted language is indicated by ~~strikethrough~~):

3. Term of the Master Agreement

This Master Agreement becomes effective upon signature by all the parties ("Effective Date"). The initial term of this Master Agreement ends ~~December 31, 2023 ("Initial Term")~~ **<u>December 31, 2024</u>**. This Master Agreement may be extended beyond the Initial Term for additional terms, at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance, provided however the term may not be extended more than 4 years beyond the end date of the Initial Term.

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, PlayPower, Inc

By: (W. Todd Brinker)
Title: Senior VP, Commercial Growth

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

By: John ANGLEMIER John Anglemier
Title: State Procurement Manager

Date: 10/31/2023

FEID # 43-1681424

Date: 10/31/2023

Approved pursuant to ORS 291.047

By: Not applicable to this amendment

Assistant Attorney General

Date: Not applicable to this amendment