

DONATION AGREEMENT BETWEEN THE CITY OF SALEM, OREGON AND MOUNTAIN WEST INVESTMENT CORPORATION

This Agreement is made between the City of Salem, an Oregon municipal corporation ("City"), and Mountain West Investment Corporation ("Donor").

RECITALS

Whereas, the City is the owner of Salem Riverfront Park ("Park") located in Salem, Oregon, and an interactive spray fountain ("Fountain") located in the Park; and

Whereas, Donor has offered to acquire and construct modifications, repairs, and enhancements ("Modifications") to the Fountain, at Donor's sole cost and expense, valued at approximately one hundred ten thousand dollars (\$110,000), and donate the completed modifications to City (the "Donation"); and

Whereas, Donor has offered to make this Donation out of Donor's generosity to the City, and for the exclusive benefit of the City; and

Whereas, the purpose of this Agreement is to set forth the terms under which Donor will donate and City will accept the Donation, and not bind or obligate Donor to make the Donation.

AGREEMENT

1. Definitions.
 - a. "City" means the City of Salem, an Oregon municipal corporation.
 - b. "Donor" means Mountain West Investment Corporation.
 - c. "Fountain" means the interactive spray fountain located in Riverfront Park.
 - d. "Modifications" means the modifications, repairs, and enhancements to the Fountain.
 - e. "Park" means the Salem Riverfront Park.
2. Exhibits. This Agreement includes the following exhibits, which are attached hereto and incorporated herein by this reference:
 - a. Exhibit A - Design Specifications for the Fountain
 - b. Exhibit B - Total Cost Estimates
 - c. Exhibit C - Deed of Gift
3. Design and Construction. City has approved a design for modifications to the Fountain, which are attached hereto as Exhibits A and B. This Agreement does not obligate Donor to donate any material or work as described in this Agreement; however, upon Donor's election to donate the material and modifications to the City, the Fountain shall be constructed in substantial compliance with Exhibit A.

4. Conditions to Acceptance of Donation. Upon satisfaction of the conditions set forth in this section, City shall accept the donation from Donor. City's acceptance of the Donation is conditioned upon the following:
 - a. Donor shall provide proof he has obtained an insurance policy providing a minimum of one million dollars (\$1,000,000) commercial general liability on an occurrence basis. The policy shall name the City of Salem, "its officers, agents, and employees" as additional insured. Donor and Donor's contractors shall also provide proof of automobile coverage with a minimum of one million dollars (\$1,000,000) general liability on an occurrence basis.
 - b. Donor shall provide a one-year warranty for the modifications. This provision may be satisfied by a warranty provided by the contractor hired by Donor for the project.
 - c. Donor shall ensure that the Fountain is constructed in accordance with Exhibit A, as determined by City.
 - d. All work related to Fountain shall be in compliance with applicable federal, state of Oregon, and City laws and regulations.
 - e. Donor shall repair or replace, or pay to City for the repair or replacement of, any damage to City real or personal property, including landscaping resulting from the work.
5. Americans with Disabilities Act. Donor shall comply with all requirements of the Americans with Disabilities Act, 42 U.S.C. sec. 12101, et seq., and all regulations implementing the Act, and any later replacements of those regulations, directly or indirectly applicable to Donor as a result of this Agreement.
6. Workers' Compensation. To the extent applicable under state law, Donor shall maintain in force, at its own expense, workers' compensation insurance in compliance with ORS 656.017. Pursuant to ORS 279B.230, if Donor employs any person, whether or not such employee will be performing any work on or related to this Agreement, and whether or not such person resides in or will perform any work in the state of Oregon, Donor is a "subject employer" and must comply with ORS 656.017, requiring maintenance of workers' compensation coverage as a self-insured or carrier-insured employer. Maintenance of workers' compensation through a state-operated fund or program of a state other than Oregon does not comply with this regulation.
7. Donor's Liability for Donation. Donor's Donation shall be limited to one hundred ten thousand dollars (\$110,000), not including any liability for damage to City real or personal property. However, should the project cost more than \$110,000 to complete, donor will be responsible for payment of all overages. City agrees to issue a supplemental donor agreement to memorialize the additional costs.

8. If, during the course of installation of the modifications, a latent defect is discovered that would render the modifications useless, the cost of repair will be the responsibility of the City. A "latent defect" is a condition that requires repair for the effective operation of the Fountain but was not contained within the scope of work as described by Exhibits A and B. The method and timing of making the repair shall be within the sole discretion of the City.
9. Should the project be abandoned before substantial completion, any improvements already installed shall become the property of the City and this agreement is terminated. The parties agree that no donation will have occurred. The City, in its discretion, may complete the project at the Donor's expense. Abandonment is defined as failing to complete the project within 180 days from the date work begins pursuant to this agreement.
10. Upon Donor electing to make donation of the Fountain, City shall:
 - a. Coordinate with Donor, or Donor's contractor, to the extent practicable regarding the work.
 - b. Timely inspect the work prior to acceptance.
 - c. Officially recognize Donor for the Donation. Permit Donor to create and install at the site of the Fountain a plaque or other sign commemorating the Fountain, and dedicating the Fountain to the children of the city of Salem, the final design and text of which shall be subject to the approval of the City.
 - d. Maintain and operate the Fountain pursuant to City's park maintenance standards.
11. Title. Title to the Fountain shall pass to City upon City's acceptance through Donor's execution of the Deed of Gift.
12. Charitable Contribution. City shall cooperate in the execution of any documentation as reasonably necessary to allow Donor to deduct the donation of the modifications for tax purposes.
11. Miscellaneous.
 - a. Independent Contractor. City has no right to supervise, direct, or control Donor, its agents, representatives, or contractors in the means, methods, or details of the work. City and Donor agree that the work is not inherently dangerous and that it will require Donor or its contractor to perform the work in a workmanlike manner and to take proper care and precautions to ensure the safety of the users of the Park. Donor agrees to defend, indemnify, and hold harmless City against any claims of non-payment by contractors or sub-contractors, or any action initiated by the Oregon Bureau of Labor and Industry.
 - b. Governing Law. The law of the State of Oregon governs this Agreement.
 - c. Notices. Any notice required to be given under this Agreement shall be given in writing addressed to the party to be notified and delivered to the party either by first class mail or personal delivery.

City:
Steve Powers
City of Salem
555 Liberty Street SE, Room 220
Salem, Oregon 97301

Donor:
Lawrence Tokarski
201 Ferry St SE #400
Salem, Oregon 97301-3775

This Agreement is entered into on the date last signed by both parties as indicated below.

City of Salem

Lawrence Tokarski

Steve Powers, City Manager

Lawrence Tokarski on behalf of
Mountain West Investment Corp

Date

Date

To: James Wellington, NW Playground Systems

From: Dana Anderson

CC:

Date: 2/16/2017

Re: Riverfront Park Splashpad

Quote



Project Description:

Retrofit existing splashpad to install new above-grade features.

Items included:

1. Demolition:
 - a. Core/sawcut at existing heads where being replaced with new features.
 - b. Remove existing heads to be replaced.
 - c. Disposal of debris.
2. Installation of new connection points.
3. Re-pour concrete at new feature locations.
 - a. New concrete finish will be matched to existing as closely as possible, but there will be slight color and texture variation.
4. Deliver new features to site.
5. Install new features to replaced connection points:
 - a. Epoxy-set anchors into concrete.
 - b. Seal feature/concrete junction as necessary.
6. Install new hard-wired activation bollard:
 - a. Locate conduit to existing sensor location, and extend to new bollard location, approx. 36" away.
 - b. Pour footing for bollard, approx. 24" x 24".
 - c. Replace wiring in existing conduit from controller to new bollard.
 - d. Install bollard on footing.
7. Provide/install water hammer arrestor.
8. Commissioning:
 - a. Run system in flow-through configuration to optimize performance with existing water supply capacity.

Price for Items included:

\$42,350.00

Items NOT included:

1. Water Odyssey parts.
 - a. Above or at-grade features.
 - b. Activation bollard.
 - c. New controller if necessary.
 - d. Controller re-programming if necessary.
 2. Design or engineering services.
 3. New piping for splash pad.
 4. City water extension or connection.
 5. Outhouse facilities for construction personnel.
 6. City or County building plan review and permit fees.
 7. Water and electrical supply for construction.
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We appreciate the opportunity to provide this budget narrative and to work with you. Please let us know if you are in need of any clarifications, scope change, or additional information.



Northwest Playground Equipment, Inc.

PO Box 2410, Issaquah, WA 98027-0109

Phone 541.385.3002 FAX (425) 313-9194

Email: james@nwplayground.com

Project Name: City of Salem

Quote # jw2817rev

TERMS AND CONDITIONS

QUOTE CONDITIONS AND ACCEPTANCE:

This quote is only valid for 30 days.

Orders placed or requested for delivery after 30 days are subject to price increases.

*** (Pls Initial) It is the Buyer's responsibility to verify quantities and description of items quoted.

Once your order has been placed, any changes including additions, deletions or color changes, will delay your shipment.

EXCLUSIONS: Unless specified, this quote specifically **excludes** all of the following:

Required Permits; Davis Bacon, Certified Payroll or Prevailing Wage fees

Performance/Payment Bonds

Site work and landscaping

Removal of existing equipment

Unloading; Receiving of inventory or equipment; Storage of equipment

Equipment assembly and/or installation

Safety surfacing; Borders or drainage requirements

FREIGHT AND DELIVERY:

Shipping is FOB Origin. A 24-hr Call Ahead is available at additional cost.

Delivery is currently 5+ weeks after order submittal. Unless otherwise noted, all equipment is delivered unassembled.

*** (Pls Initial) Buyer is responsible to meet and provide a minimum of 2 adults to unload truck

A Check List, detailing all items shipped, will be mailed to you and a copy will be included with the shipment.

Buyer is responsible for ensuring the Sales Order and Item Numbers on all boxes and pieces match the Check List.

*** (Pls Initial) Shortages or damages must be noted on the driver's delivery receipt. Shortages or damages not noted be the buyers financial responsibility.

Damaged Freight must be refused. Please notify Northwest Playground Equipment immediately of any damages.

Shortages and Concealed Damage must be reported to Northwest Playground Equipment within 10 days of delivery.

A re-consignment fee will be charged for any changes made to delivery address after order has been placed.

TAXES:

All orders delivering in Washington are subject to applicable sales tax unless a tax exemption or Reseller Permit is on file at the time the order is placed.

PAYMENT TERMS: An approved Credit Application is required for new customers. 50% down payment is due at time of order with balance due upon delivery, unless other credit terms have been approved. Interest may be charged on past due balances at an annual rate of 18%. A 3% charge will be added to all credit card orders.

RESTOCKING: Items canceled, returned or refused will be subject to a minimum 25% restocking fee. All return freight charges are the responsibility of the Buyer.

MAINTENANCE/WARRANTY:

Manufacturer's standard product warranties apply and cover equipment replacement and freight costs only; labor is not included.

Northwest Playground Equipment offers no additional warranties.

Maintenance of the equipment and safety surfacing is the responsibility of the customer.

Any unauthorized alterations or modifications to the equipment (including layout) will void your warranty.

INSTALLATION: (if applicable)

A private locate service for underground utilities must be completed before your scheduled installation.

Site must be level and free of loose debris (this includes ground cover/chips).

A minimum 6 foot opening with good access must be available to the site for delivery trucks and tractor.

An onsite dumpster must be provided for disposal of packaging materials.

Arrangements must be made in advance for the disposal of dirt/rocks from within the installation area.

Arrangements must be made in advance for the removal/disposal of existing equipment.

Additional charges may apply if large rocks or concrete are found beneath the surface.

Access to power and water must be available.

Site supervision is quoted in 8-hour days.

Acceptance of Terms & Conditions

Acceptance of this proposal, made by an authorized agent of your company, indicates agreement to the above terms and conditions

James Wellington

SO OR Consultant

Customer Signature

Date

Thank you for choosing Northwest Playground Equipment



Northwest Playground Equipment, Inc.

PO Box 2410, Issaquah, WA 98027-0109

Phone 541.385.3002 FAX (425) 313-9194

Email: james@nwplayground.com

QUOTE

To: **City of Salem**
Salem, OR 97301

Quote # jw2817rev

Date: 3.13.2017

Contact Name: JD Clarizio

Phone: 503.588.6396

Email: jclarizio@cityofsalem.net

Fax:

Item #	Qty	Description	Price	Total Price
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Water Odyssey Play Features

Design 4A

F3029	1	Fun Forms™ Felipe Frog Aqua Spout		\$ 2,173.00
F3023	1	Fun Forms™ Beatrice Butterfly Aqua Spout		\$ 2,498.00
F3007	1	Fun Forms™ Finn the Fish Aqua Spout		\$ 1,477.00
F3005	1	Fun Forms™ Lindsey Ladybug Aqua Spout		\$ 1,245.00
W056C (135)	2	Gravity Shooter™ designed for 135 Degree Horizontal Swing Splash Zone	\$7,440.00	\$ 14,880.00
W238	1	Water Rings™ (4 Ring Assembly)		\$ 20,868.00
W103 (3)	1	Fill N' Spill™, 3-Arm Assembly		\$ 12,480.00
W-009	1	Touch n Go Wired Bollard		\$ 1,800.00

Equipment Subtotal 4A \$ 57,421.00

Equipment Subtotal 5A

Discount: OR Cities incl

Crate/Freight 4A: \$ 4,835.00

Crate/Freight 5A:

Equipment Total 4A \$ 62,256.00

Equipment Total 5A

INSTALLATION

installation not included for this quotation

n/a

Credit card fee 0

Performance Bond (If Required): 3.0%

Location Code: Resale Certificate Required for Tax Exemption

Tax: 0.0%

ORDER TOTAL: \$ 62,256.00

All quotes are subject to material and fuel surcharges.

Acceptance of Proposal:

(Please be sure you have read, signed, initialed and understand the Terms and Conditions on Page 2 of this Quote)

The items, prices and conditions listed herein are satisfactory and are hereby accepted.

James Wellington

SO OR Consultant

Customer Signature

Date

Thank you for considering Northwest Playground Equipment, Inc. for your
Park, Playground, Shelter and Sports Equipment requirements.

DEED OF GIFT

Grantor, Mountain West Investment Corporation, hereby conveys, devises, and grants to Grantee, the City of Salem, an Oregon municipal corporation, to have and to hold for its exclusive benefit, that certain repairs, modifications, and enhancements to the improvement, known as the Interactive Spray Fountain, constructed upon the City of Salem's Riverfront Park, as described in Exhibit A, which is attached hereto, and by this reference incorporated herein.

DATED this _____ day of _____, 2017.

Lawrence Tokarski, on behalf of Mountain West
Investment Corporation

State of Oregon)
) ss.:
County of _____)

This instrument was acknowledged before me on _____, 2017, by
Lawrence Tokarski.

Notary Public for Oregon
My Commission Expires:

ACCEPTED ON BEHALF OF THE CITY OF SALEM

Steve Powers, Salem City Manager
