

DOCUMENT 00500 – AGREEMENT

BETWEEN OWNER AND CONTRACTOR

Contractor: Porter Corp. d/b/a Poligon

Contract Name/Title: **Construction – Gulley Park Improvements**

Contract No.: _____

THIS AGREEMENT is dated as of the _____ day of _____ in the year 20__ by and between The City of Fayetteville, Arkansas and _____.(hereinafter called Contractor).

ARTICLE 1 - WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The work under this Contract includes, but is not limited to:

The project includes, but not limited to, expansion of the playground, new pavilion, interactive fountain, play areas, walks, landscaping, boulder work, lighting, drainage, sitting walls, safety surfacing, and other improvements as indicated in the construction documents.

ARTICLE 2 - ENGINEER

2.01 The Project has been designed by Landscape Architects and Engineers employed by the City of Fayetteville, Arkansas. The Landscape Architect/Engineer assumes all duties and responsibilities, and has the rights and authority assigned to Landscape Architect/Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT TIME

3.01 TIME OF THE ESSENCE:

A. All time limits for milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

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3.02 DATES FOR SUBSTANTIAL COMPLETION AND FINAL PAYMENT:

- A. The Work will be Substantially Completed within **330** calendar days after the date when the Contract Times commence to run as provided in the GENERAL CONDITIONS, and completed and ready for final payment in accordance with the GENERAL CONDITIONS within **30** calendar days after the substantial completion date.

3.03 LIQUIDATED DAMAGES:

- A. Owner and Contractor recognize that time is of the essence of this Agreement and that The City of Fayetteville will suffer financial loss if the Work is not completed within the time specified above, plus any extensions thereof allowed in accordance with the GENERAL CONDITIONS. The parties also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by The City of Fayetteville if the Work is not Substantially Completed on time. Accordingly, the City of Fayetteville and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay The City of Fayetteville Five Hundred Dollars (\$500.00) for each calendar day that expires after the time specified above in Paragraph 3.02 for Substantial Completion until the remainder of the Work is Substantially Complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the time specified in Paragraph 3.02 for completion and readiness for final payment or any proper extension thereof granted by The City of Fayetteville, Contractor shall pay The City of Fayetteville Five Hundred Dollars (\$500.00) for each calendar day that expires after the time specified for completion and readiness for final payment.

ARTICLE 4 - CONTRACT PRICE

- 4.01 The CITY OF FAYETTEVILLE agrees to pay, and the CONTRACTOR agrees to accept, as full and final compensation for all work done under this agreement, the amount based on the prices in the Proposal which is hereto attached, as well as the

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Schedule of Values (Appendix F), for the actual amount accomplished under each pay item, said payments to be made in lawful money of the United States at the time and in the manner set forth in the Specifications. The Schedule of Values is included to allocate costs between Contractors for their relative portion of the Work.

- 4.02 As provided in the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by ENGINEER as provided in the General Conditions.

ARTICLE 5 - PAYMENT PROCEDURES

5.01 SUBMITTAL AND PROCESSING OF PAYMENTS:

- A. Contractor shall submit Applications for Payment in accordance with the GENERAL CONDITIONS. Applications for Payment will be processed by Engineer as provided in the GENERAL CONDITIONS.

5.02 PROGRESS PAYMENTS, RETAINAGE:

- A. The City of Fayetteville shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Landscape Architect / Engineer, on or about the same day each month during construction. All such payments will be measured by the schedule of values (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Landscape Architect / Engineer shall determine, or The City of Fayetteville may withhold, in accordance with the GENERAL CONDITIONS.

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- a. 95% of Work Completed (with the balance being retainage).
 - b. 100% of Equipment and Materials not incorporated in the Work but delivered, suitably stored, and accompanied by documentation satisfactory to The City of Fayetteville as provided in the GENERAL CONDITIONS.
2. Upon Substantial Completion, The City of Fayetteville shall pay an amount sufficient to increase total payments to Contractor to 95% of the Contract Price (with the balance being retainage), less such amounts as Engineer shall determine, or The City of Fayetteville may withhold, in accordance with the GENERAL CONDITIONS

5.03 **FINAL PAYMENT:**

- A. Upon final completion and acceptance of the Work in accordance with the GENERAL CONDITIONS, The City of Fayetteville shall pay the remainder of the Contract Price as recommended by Landscape Architect / Engineer and as provided in the GENERAL CONDITIONS.

ARTICLE 6 - CONTRACTOR'S REPRESENTATIONS

- 6.01 In order to induce The City of Fayetteville to enter into this Agreement, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents including the Appendices and other related data identified in the Contract Documents.
 - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, performance, and furnishing of the Work.
 - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.

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- D. Contractor or a major sub of the contractor shall be experienced in playground construction and be a Certified Playground Safety Inspector (CPSI) or employ a CPSI. Contractor shall insure that the playground construction and playground equipment is installed and constructed to meet relevant playground standards including but not limited to the most up-to-date versions of ASTM F-1487, ASTM F-2223, F-2373, IPEMA, and the most up-to-date version of the CPSC Public Playground Safety Handbook.
- E. Contractor has carefully studied all:
- (1) reports of explorations and tests of subsurface conditions at the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site; and
 - (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site. Contractor acknowledges that The City of Fayetteville and Landscape Architect / Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site.
- F. Contractor has obtained and carefully studied (or assumes responsibility of having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, and subsurface) at or contiguous to the Site or otherwise which may affect cost, progress, performance, and furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.
- G. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performing and furnishing of the Work at the Contract Price, within the

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Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

- H. Contractor is aware of the general nature of work, if any, to be performed by The City of Fayetteville and others at the Site that relates to the Work as indicated in the Contract Documents.
- I. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- J. Contractor has given Landscape Architect/Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Landscape Architect/Engineer is acceptable to Contractor.
- K. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

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ARTICLE 7 - CONTRACT DOCUMENTS

7.01 CONTENTS:

A. The Contract Documents which comprise the entire Agreement between The City of Fayetteville and Contractor concerning the Work consist of the following and may only be amended, modified, or supplemented as provided in the GENERAL CONDITIONS:

1. This Agreement.
2. Exhibits to this Agreement (enumerated as follows):
 - a. Notice to Proceed.
 - b. Contractor's Proposal.
 - c. Documentation submitted by Contractor prior to Notice of Award.
3. Performance, Payment, and other Bonds.
4. General Conditions.
5. Supplementary Conditions if any.
6. Specifications consisting of divisions and sections as listed in table of contents of Project Manual.
7. Drawings consisting of a cover sheet and sheets as listed in the table of contents thereof, with sheets bearing the following general title:

Gulley Park Playground and Splash Pad Improvements or
Construction – Gulley Park Improvements
8. Appendices A through F.
 - Appendix A – Sourcewell Contract 012621-PPC

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- Appendix B – Proposal Dated January 18, 2023
- Appendix C – Project Manual and Drawings titled Gulley Park Playground and Splash Pad Improvements, including updated sheets C6 Rev and C7 Rev.
- Appendix D – Work Areas Diagram – Sourcewell Contracts
- Appendix E – Work Clarification Information for Gulley Park Playground and Splash Pad Improvements Sourcewell Contracts
- Appendix F – Schedule of Values

9. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to the GENERAL CONDITIONS.

B. Precedence of Controlling Documents: In the event of any conflict between the terms of these Contract Documents, the terms contained in this Agreement shall take precedence, followed by the terms of Appendix A, then Appendix C, then Appendix D, then Appendix B. In matters of construction and playground installation work the construction drawings and project manual shall take precedence over other written documents.

ARTICLE 8 - MISCELLANEOUS

8.01 TERMS:

A. Terms used in this Agreement which are defined in the GENERAL CONDITIONS shall have the meanings stated in the GENERAL CONDITIONS.

8.02 ASSIGNMENT OF CONTRACT:

A. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be

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assigned without such consent (except to the extent that the effect of this restriction may be limited by Law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

8.03 SUCCESSORS AND ASSIGNS:

- A. The City of Fayetteville and Contractor each binds himself, his partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

8.04 SEVERABILITY:

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon The City of Fayetteville and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

8.05 OTHER PROVISIONS:

- A. All Dumpsters shall be procured from City of Fayetteville. Any use of a third party dumpster or roll off container shall be procured from the City of Fayetteville Recycling and Trash Collection Division. Use of a Non-City dumpster or roll off container is not allowed.
- B. Contractor is responsible for obtaining all applicable permits; however, fees for the City issued permits shall be waived. There shall be no burning of any materials and no blasting of any kind.

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IN WITNESS WHEREOF, The City of Fayetteville and Contractor have signed this Agreement in quadruplicate. One counterpart each has been delivered to Contractor and Landscape Architect / Engineer. Two counterparts each has been delivered to The City of Fayetteville. All portions of the Contract Documents have been signed, initialed, or identified by The City of Fayetteville and Contractor or identified by Landscape Architect / Engineer on their behalf.

This Agreement will be effective on January 23, 2023, which is the Effective Date of the Agreement.

CONTRACTOR Porter Corp
Robert Arent
By: [Signature]
Title: Credit Mgr

CITY OF FAYETTEVILLE _____
By: _____
Title: _____

(SEAL)

(SEAL)

Witness [Signature]
Address for giving notices
4240 136th Ave.
Holland, MI 49424
License No. n/a

Attest _____
Address for giving notices

Agent for Service of process

(attach evidence of authority to sign and resolution or other documents authorizing execution of Agreement)

(If Contractor is a corporation, attach evidence of authority to sign.)

END OF DOCUMENT 00500