

CONSTRUCTION CONTRACT

This contract is made and entered into on _____, by and between **YOSSO GROUP INC., DBA SPECIFIED PLAY EQUIPMENT CO.**, a **STATE OF CALIFORNIA CORPORATION**, with a business address at **121 #1 INDUSTRIAL ROAD, BELMONT, CA 94002**, hereinafter called "CONTRACTOR," and CITY OF STOCKTON, a municipal corporation, hereinafter called "CITY."

WITNESSETH:

WHEREAS, plans and specifications for the construction of **PLAYGROUND AT LOCH LOMOND PARK (PROJECT NO. WP25029)**, hereinafter called "PROJECT," were regularly adopted by **Council Resolution No. _____**, on _____; and

WHEREAS, the contract for said work was regularly awarded to CONTRACTOR, by **Council Resolution No. _____**, on _____.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants herein contained, the parties hereto expressly agree as follows:

CONTRACTOR agrees:

1. SCOPE OF SERVICES. To do the work and furnish all the labor, materials, tools, equipment, and insurance required for the construction of PROJECT in accordance with the plans and specifications adopted on _____, by **Council Resolution No. _____**. The "contract documents," which include the bid documents, project plans, specifications, all letters of clarification, and the City of Stockton Standard Specifications and Plans, are incorporated into and made a part of this contract by this reference to the same extent as if fully set forth.

2. COMPENSATION. To do and perform the work contemplated hereby in a good and workmanlike manner and to furnish all labor, materials, tools, and equipment necessary therefore at the prices specified in **Exhibit A**, attached hereto and by reference made a part hereof, under the direction of and to the complete satisfaction of the Director of Public Works of the City of Stockton. Total compensation for services and reimbursement for costs shall not exceed **\$293,311.21**, or as otherwise mutually agreed to in a Contract Change Order.

3. INSURANCE. CONTRACTOR shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this contract, the policies of insurance specified in **Exhibit B**, which is attached to this contract and incorporated by this reference, and as provided in the "contract documents" including Section 7-1.06 of the City of Stockton Standard Specifications and Plans as adopted on September 27, 2016, by Council Resolution No. 2016-09-27-1213, effective September 27, 2016.

It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured.

Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.

The Additional Insured coverage under the CONTRACTOR's policy shall be "primary and non-contributory" and will not seek contribution from the City of Stockton's insurance or self-insurance and shall be at least as broad as ISO CG 20 01 04 13.

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Stockton (if agreed to in a written contract or agreement) before the City of Stockton's own insurance or self-insurance shall be called upon to protect it as a named insured.

All self-insured retentions (SIR) must be disclosed to the CITY's Risk Management for approval and shall not reduce the limits of liability. Payment Bond in the amount of the self-insured retention (SIR) may be required.

Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the CITY.

The CITY reserves the right to obtain a full certified copy of any insurance policy and endorsements.

Failure to exercise this right shall not constitute a waiver of right to exercise later.

CONTRACTOR shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event contractor fails to obtain or maintain completed operations coverage as required by this agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by contractor.

CONTRACTOR agrees to include with all Subcontractors in their subcontract the same requirements and provisions of this agreement including the indemnity and insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontractors hired by CONTRACTOR agree to be bound to CONTRACTOR and the CITY in the same manner and to the same extent as CONTRACTOR is bound to the CITY under the Contract Documents. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A copy of the CITY Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. The General CONTRACTOR shall require all sub-contractors to provide a valid certificate of

insurance and the required endorsements included in the agreement prior to commencement of any work and contractor will provide proof of compliance to the City.

4. INDEMNITY AND HOLD HARMLESS. To the fullest extent permitted by law, Contractor shall hold harmless, defend, and indemnify City of Stockton and its officers, officials, employees, and volunteers from and against all claims, damages, losses, and expenses including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the City of Stockton. This obligation is independent of, and shall not in any way be limited by, the minimum Insurance obligations contained in this agreement. These obligations shall survive the completion or termination of this agreement.

5. STANDARD PLANS AND SPECIFICATIONS. The performance of said work and the furnishing of said materials shall be executed in accordance with Section 8-1.04B of the City of Stockton Standard Specifications and Plans as adopted on September 27, 2016, by Council Resolution No. 2016-09-27-1213, effective September 27, 2016, and the provisions of the issued project specifications.

The Director of Public Works will furnish CONTRACTOR a weekly statement showing the number of days charged to the contract for the preceding week, the number of days specified for completion of the contract, and the number of days remaining to complete the contract. CONTRACTOR will be allowed one (1) week in which to file a written protest setting forth in what respects said weekly statement is incorrect, otherwise the statement shall be deemed to have been accepted by CONTRACTOR as correct.

6. WORKING DAYS. This work shall be diligently prosecuted to completion before the expiration of 30 WORKING DAYS beginning on the tenth calendar day after the date shown on the Notice to Proceed. It is agreed by the parties to the contract that in case all the work called for under the contract in all parts and requirements, is not finished or completed within the number of days as set forth, damage will be sustained by the CITY, and that it is and will be impracticable and extremely difficult to ascertain the actual damage which CITY will sustain in the event of and by reason of such delay; and it is therefore agreed that CONTRACTOR will pay to CITY the sum of THREE THOUSAND SIX HUNDRED AND NO/100 DOLLARS (\$3,600) per day for each and every calendar day's delay in finishing the work in excess of the number of days prescribed; and CONTRACTOR agrees to pay said liquidated damages as herein provided, and in case the same are not paid, agrees that CITY, may deduct the amount thereof from any monies due or that may become due CONTRACTOR under the contract.

It is further agreed that in case the work called for under the contract is not finished and completed in all parts and requirements within the number of days as specified, the CITY shall have the right to increase the number of days or not, as may seem best to serve the interest of CITY, and if the CITY decides to increase the said number of days, the CITY shall further have the right to charge to CONTRACTOR, CONTRACTOR's heirs, assigns or sureties, and to deduct from the final payment for the work, all or any part, as

may be deemed proper, the liquidated damages as specified or the actual cost of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the contract, and which accrue during the period of such extension, whichever is greater, except the cost of final surveys and preparation of final estimate shall not be included in such charges.

A working day shall not include, nor shall CONTRACTOR be assessed with liquidated damages nor the additional cost of engineering and inspection during any delay beyond the time named for the completion of the work caused by acts of God or of the public enemy, acts of CITY, fire, floods, epidemics, quarantine restrictions, strikes, and freight embargoes and subject to approval by the Director of Public Works, inability to get materials ordered by CONTRACTOR or subcontractor due to such causes provided that CONTRACTOR shall notify the Director of Public Works in writing of the causes of delay within five (5) working days from the beginning of any such delay, and the Director shall ascertain the facts and the extent of the delay, and Director's findings of the facts thereon shall be final and conclusive.

If CONTRACTOR is delayed by reason of alterations made in these specifications, or by any act of the Director of Public Works or of the CITY, not contemplated by the contract, the time of completion shall be extended proportionately, and CONTRACTOR shall be relieved during the period of such extension of any claim for liquidated damages, engineering or inspection charges or other penalties. CONTRACTOR shall have no claim for any other compensation for any such delay.

7. CONFORMANCE TO APPLICABLE LAWS. Contractor shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Contractor shall not discriminate in the employment of persons or in the provision of services under this Contract on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

a. TITLE VI

Title VI of the Civil Rights Act of 1964 requires that "no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." (42 USC Section 2000d)

<https://www.dol.gov/agencies/oasam/regulatory/statutes/title-vi-civil-rights-act-of-1964>.

The City of Stockton requires compliance with the requirements of Title VI in all of its programs and activities regardless of funding source.

b. DISCRIMINATION AND HARASSMENT POLICY

The City of Stockton has a Discrimination and Harassment Policy (**Exhibit C**). The purpose of this policy is to reaffirm the CITY's commitment to demonstrating respect for all individuals by strictly prohibiting discrimination

and harassment, including sexual harassment in the workplace, to define the types of behavior and conduct prohibited by this policy, and to set forth a procedure for reporting, investigating, and resolving complaints of discrimination and harassment in the workplace.

c. LABOR STANDARDS PROVISIONS/CALIFORNIA LABOR CODE

The bidder shall understand that conditions set forth in Chapter 1, Part 7, Division 2 of the California Labor Code shall be considered part of the contract agreement.

https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=LAB&division=2.&title=&part=7.&chapter=1.&article=2.

d. PREVAILING WAGE

CONTRACTOR and any subcontractor shall pay each employee engaged in the trade or occupation not less than the prevailing hourly wage rate. In accordance with the provisions of Section 1770 of the Labor Code, the Director of Department of Industrial Relations of the State of California has determined the general prevailing wage and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.1, apprenticeship or other training programs authorized by Section 3093 and similar purposes applicable to the work to be done. CONTRACTOR performing the work under this contract shall obtain a copy of the wage rate determination and shall distribute copies to each subcontractor. As the wage determination for each craft reflects an expiration date, it shall be the prime CONTRACTOR and each subcontractor's responsibility to ensure that the prevailing wage rates of concern is current and paid to the employee.

i. The CONTRACTOR performing the work shall be responsible for obtaining a copy of the State wage rate determination. State wage rates may be obtained at <https://www.dir.ca.gov/Public-Works/Prevailing-Wage.html>. The CONTRACTOR shall be responsible for posting said wage rates at a prominent location at the work site and shall maintain same in a good readable condition for the duration of the work.

ii. Should the CONTRACTOR choose to work on a Saturday, Sunday or on a holiday recognized by the Labor Unions, the CONTRACTOR shall reimburse the CITY the actual cost of engineering, inspection, superintendence, and or other overhead expenses which are directly chargeable to the contract. Should such work be undertaken at the request of the CITY, reimbursement will not be required. To conform strictly with the provisions of Division 2, Part 7, Chapter 1, Article 2, of the Labor Code of the State of California. To forfeit as a penalty to CITY the sum of TWENTY-FIVE AND NO/100 DOLLARS (\$25.00) for each laborer, worker, or mechanic employed by CONTRACTOR, or by

any subcontractor under CONTRACTOR, in the execution of this contract, for each calendar day during which any laborer, worker, or mechanic is required or permitted to work more than eight (8) hours and who is not paid the general prevailing rate of per diem wages for holiday and overtime work in violation of the provisions of Sections 1770 to 1781 of the Labor Code of the State of California. That all sums forfeited under the provisions of the foregoing sections shall be deducted from the payments to be made under the terms of this contract.

- iii. The CONTRACTOR to whom the contract is awarded shall ensure that the prime and each subcontractor will in accordance with Section 1776 of the Labor Code, maintain certified payroll records. A copy of said records shall be provided with each invoice to the Public Works Department, Attention Contract Compliance Officer. It shall be the CONTRACTOR'S responsibility to obtain copies of the current prevailing wage rate determination for all subcontractors. Additionally, certified payroll records must be uploaded to the DIR website as required by labor code.
- iv. The CONTRACTOR shall comply with the provisions established in Section 1777.5 of the Labor Code concerning the 1) certified approval by local joint apprenticeship committees for the employment and training of apprentices, and 2) contribution of funds to administer and conduct apprenticeship programs, if applicable to the job.

e. LOCAL EMPLOYMENT ORDINANCE

Pursuant to Stockton Municipal Code Section 3.68.095 the CONTRACTOR and all subcontractors shall make a good faith effort to employ at least 50 percent of the workforce on this project from local residents, as measured by total labor work hours. Failure of any CONTRACTOR or subcontractor to comply with these requirements shall be deemed a material breach of the contract or subcontract. CONTRACTORS and subcontractors shall maintain records necessary for monitoring their compliance with section 3.68.095.

f. SANCTIONS

Deliverables must conform with all applicable federal, state, and local laws. Such conformity includes compliance with federal sanctions, and Contractor certifies that it has not and will not engage in prohibited transactions with sanctioned persons or entities.

CITY agrees:

8. COMPENSATION. To pay CONTRACTOR for the work herein contemplated in the following manner: Progress payments will be made on or about the

first day of each calendar month, in such sum as shall make the aggregate of payment up to such day equal to ninety-five percent (95%) of the proportional contract price, upon the basis of the progress certificate of the Director of Public Works as to the amount of work done and the proportional amount of the contract price represented therefore; and all of the remaining part of the contract price not as aforesaid paid, shall be paid at the expiration of thirty-five (35) days from the completion of said work of construction and the certification by the Director of Public Works of such completion.

9. SECURITIES. Pursuant to Section 22300 of the Public Contract Code, CONTRACTOR will be permitted, at its request and sole expense, to substitute securities for any monies withheld by the CITY to ensure performance under the contract. Said securities will be deposited either with the CITY or with a State or federally chartered bank as escrow agent. Securities eligible for this substitution are those listed in Section 16430 of the California Government Code or bank or savings and loan certificates of deposit. CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

10. CHANGE ORDERS. CITY reserves the right to make such alterations, deviations, additions to or omissions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of the work, as may be deemed by the Engineer to be necessary or advisable and to require such extra work as may be determined by the Engineer to be required for the proper completion or construction of the whole work contemplated.

Any such changes will be set forth in a contract change order which will specify, in addition to the work done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for such work. A contract change order will not become effective until approved by the City Manager and/or the City Council.

Processing of change orders shall be in accordance with Section 4-1.05A of the City of Stockton Standard Specifications and Plans as adopted by Council on September 27, 2016, by Resolution No. 2016-09-27-1213, effective September 27, 2016, or as otherwise amended by Council. When the compensation for an item of work is subject to adjustment under the provisions of Standard Specifications and Plans, Section 4-1.05A, CONTRACTOR shall, upon request, promptly furnish the Engineer with adequate detailed cost data for such item of work.

11. AUDITS. CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under the contract. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance.

CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of the contract. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under

investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under the contract.

12. WAIVER. It is expressly understood and agreed by and between the parties hereto that a waiver of any of the conditions of this contract shall not be considered a waiver of any of the other conditions thereof.

It is further understood and agreed by and between the parties hereto that time is of the essence of this contract in all respects.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals the day and year first above written.

ATTEST:
KATHERINE ROLAND, CMC, CPMC
CITY CLERK

CITY:

By: _____

By: _____
WILL CREW
ACTING CITY MANAGER

APPROVED AS TO FORM & CONTENT:
LORI M. ASUNCION
OFFICE OF THE CITY ATTORNEY

By: _____
YOSSO GROUP INC., DBA
SPECIFIED PLAY EQUIPMENT CO.

By: _____
DEPUTY CITY ATTORNEY

Tax Identification No.

YOSSOGROUP INC. DBA SPECIFIED PLAY
EQUIPMENT CO
121 #1 Industrial Road
Belmont, CA 94002
6508635006
www.specplay.com



ADDRESS

City of Stockton Public Works
Dept, Parks
1465 S Lincoln St
Stockton, CA 95206

SHIP TO

City of Stockton Public Works
Dept, Parks
1465 S Lincoln St
Stockton, CA 95206

Estimate 3707

DATE 08/26/2025

EXPIRATION DATE 10/31/2025

TRACKING NO.

Loch Lomond Park

DEPOSIT DUE NOW

WP25029 Loch Lomond Park

PROJECT MANAGER

Chris Olsen

ACTIVITY	QTY	RATE	AMOUNT
BCI Burke Equipment Burke Equipment per Design 137-198164-4 with safety signs included	1	131,969.00	131,969.00T
Discount	1	-4,000.00	-4,000.00T
Receive and Offload Offload and Storage of all Equipment By Installer	1	5,527.00	5,527.00
Site Work Stockpile and Reinstall existing EWF estimated at 85 CY	1	6,035.00	6,035.00
Demolition Demo Disposal of Existing Benches (2) and Existing Playground Equipment and Footers	1	5,510.00	5,510.00
Installation Service Installation of Equipment per design 137-198164-4 to manufacturer inground recommendations through soil. Footing spoils disposed off-site. Installation of (2) SM Benches included	1	70,380.00	70,380.00
Protective Safety Surfacing Installation EWF to meet ASTM/CPSC requirements, estimated 75 c/y	1	6,675.00	6,675.00

Please write checks to
Specified Play Equipment Co (SPEC Play)
121 #1 Industrial Road
Belmont, CA 94002

ACTIVITY	QTY	RATE	AMOUNT
Field Inspection 3rd Party CPSI Inspection in both areas (2-5 and 5-12)	1	2,312.00	2,312.00
Demolition Demo Disposal of existing Concrete borders, ADA ramp, and sidewalk as per plan ~80 LF + 240 SF	1	10,871.00	10,871.00
Site Work Excavation and Disposal of existing lawn and native soils to 12" depth. ~ 1333 SF	1	9,658.00	9,658.00
Site Work New ADA Access Ramp into play box	1	7,830.00	7,830.00
Site Work New Concrete containment for expanded box. ~ 76 LF	1	11,183.00	11,183.00
Freight Freight and packaging	1	7,925.00	7,925.00
Bonding Payment and performance bond	1	9,919.00	9,919.00

PLEASE NOTE:

- Lead Time estimated at: 6-8 weeks
- Burke Generations Warranty (non-prorated, best in industry) included.
- Safety Signage included
- Payment/Performance Bond included
- Capping and Re-reroute of irrigation by City
- Temp Fence supplied by City
- Prevailing Wage used for all construction line items.
- Approved colors required at time of order

ACCEPTANCE By signing below, you acknowledge and agree to our estimate, contract, exclusions, conditions, payments, and Terms and Conditions attached shall comprise to be the Agreement. The values shown above represent a specific scope; no other work should be assumed unless specifically noted in the text of the above line items.

TERMS: Client must pay 50% of the equipment listed in the Estimate amount within 5 calendar days of invoicing. Client must pay remaining balance of all equipment on or before its delivery. Client must pay the balance of the entire Estimate and/or CO within 30 calendar days of notice by SPEC that Project is Complete.

Failure to pay any amount when due shall cause interest to begin to accrue at 12% per annum on the entire unpaid amount of the Agreement. Any late payment will cause Client being responsible for a 2% late fee on any late payment. Any action

SUBTOTAL
TAX

281,794.00
11,517.21

Please write checks to

Specified Play Equipment Co (SPEC Play)

121 #1 Industrial Road

Belmont, CA 94002

by SPEC to enforce collection of Agreement amount owed,
Client must pay all attorney fees and costs.

TOTAL	USD 293,311.21
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Accepted By

Accepted Date

Please write checks to
Specified Play Equipment Co (SPEC Play)
121 #1 Industrial Road
Belmont, CA 94002

SPEC has signified SPEC's willingness to erect the Project, is defined as the structure identified to be constructed in the Estimate in accordance with the drawings and specifications attached to this Agreement and signed by SPEC and Client, and in accordance with the conditions and for the consideration set forth below and the attached Estimate. Hereinafter SPEC and Client are jointly referred to as "Parties" or "Party".

It is agreed between the parties, in consideration of their mutual agreements, as follows:

1. SPEC agrees:

A. To furnish all the materials and perform all the work for the erection of the Project in accordance with the plans and specifications prepared by SPEC, signed by Client, and attached to this Agreement as Estimate and made a part of this Agreement.

B. To maintain insurance to protect SPEC from claims under worker's compensation acts and from any other claims for damages for personal injury, including death, which may arise from operations under this Agreement, whether such operations be by SPEC or by any subcontractor or anyone directly or indirectly employed by either of them. No other insurance is expected or maintained by SPEC unless specifically stated in this Agreement or Estimate.

C. Bonds. SPEC is not required to maintain a Bond unless specifically stated in the Estimate.

D. That Client may make any alterations, deviations, additions or omissions from the plans and specifications, or either of them, which SPEC shall deem proper, by a written order "Change Order" signed by all necessary parties and approved by Client, without affecting or making void this Agreement and in all such cases Client shall appraise such alterations, and add to or deduct from the amount agreed to be paid to SPEC any excess or deficiency occasioned by such alterations. In case any alterations or deviations are made, such further time may be allowed for completion of the work caused by the alterations or deviations as SPEC shall decide to be reasonable.

If SPEC should be adjudged a bankrupt, or if SPEC should make a general assignment for benefit of SPEC creditors, or if a receiver should be appointed on account of SPEC insolvency, or if SPEC should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials, or if SPEC should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, ordinances or the instructions of the architect, or otherwise be guilty of a substantial violation of any provision of the contract, Client, that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving SPEC 30 days written notice, terminate the employment of SPEC and take possession of the Project and of all materials, tools and appliances in the Project.

2. The Client agrees:

A. Client understands and agrees no other work should be assumed to be done by SPEC unless specifically expressed in the Estimate and/or the Terms and Agreement. This includes but not limited to, SPEC does not have the responsibility for: offloading equipment, removal of packaging, project security, landscape and hardscape repair, delays due to conflicts, removal of spoils, locating underground, utilities, pipes, obstructions, conditions unforeseen and/or not disclosed at time of estimate, permits, engineering, soil samples.

B. To pay the SPEC for the performance of this Agreement, subject to additions and deductions provided in this Agreement, in current funds as provided in the Estimate. Where quantities originally contemplated are so changed that application of the agreed unit price to the quantity of work performed is shown to create a hardship to Client or SPEC, there shall be an equitable adjustment of this Agreement to prevent such hardship. The Client shall make payments on account of this Agreement, which includes the Estimate.

C. SPEC is not responsible for but not limited to Union Agreements or Project Labor Agreement.

D. To give all requisite notices to the proper authorities, obtain all official inspections, permits, certificates and licenses made necessary by the work in SPEC Estimate, and pay all proper and legal fees.

E. Deliverables, Objectives, and Project Phases. Each Estimate will describe the deliverables, objectives, or project phases that SPEC must complete. The completion of each deliverable, objective, or project phase is subject to review by Client. If a payment is contingent upon SPEC completing a deliverable, objective, or project phase, then the payment will not be due until Client provides written acceptance of completion.

F. Change Requests. Client request changes to the scope of the Project by sending a written request to SPEC ("Change Request"). Within ten (10) days after receiving a Change Request, SPEC will review the Change Request and notify Client in writing of any financial or schedule change required to implement the Change Request. The Change Request will not be binding unless agreed to in writing by both parties. If Client agrees to pay SPEC's additional fees to make the changes, then SPEC may not refuse to accept the Change Request.

G. Ownership of Developed Intellectual Property. All documents, including original drawings, estimates, specifications, field notes, and data are and remain the property of SPEC as instruments of service. SPEC shall grant Client a perpetual, non-exclusive, irrevocable license to a set of reproducible record prints of drawings and copies of other instruments of service for Client's use in connection with the Project, for future renovations, repairs, maintenance, or operations related to the Project, and for the limited purpose of Client's development and/or marketing efforts, including, but not limited to, communications with potential donors and other funding sources. SPEC shall not be responsible

for any modifications to the Project made by Client or Client's representatives using SPEC's Instruments of Service. Reuse for new projects shall require the prior, express, and written permission of SPEC and shall entitle SPEC to further compensation at a rate to be agreed on by Client and SPEC.

H. **Conflicting Contractual Obligations.** Client warrants that Client will be free, as of the date of the performance by SPEC of any services pursuant to this Agreement, of any contractual obligations that would prevent Client from having the services performed by SPEC, and that SPEC's offer or agreement to the Project in no way caused or induced Client to breach any existing contractual obligations.

E. **Client Review of Work Product.** Client shall review all reports and data submitted by SPEC within ten (10) days following delivery and shall notify SPEC in writing of any discrepancies or deficiencies contained in the material.

F. **Access To Premises.** Client must provide constant access to the Premises to include but not limited to workmen, materials, tools, and equipment. SPEC is not responsible for grades, stable, compacted, underground obstacles (pipes, wiring, rocks and so forth) and workable, rough grade to be taken plus or minus one tenth of one inch.

3. **Indemnification.**

A. **General Indemnification.** SPEC will defend and indemnify Client, its subsidiaries and affiliates, and their respective officers, directors, agents and employees (collectively, the "Client Parties") against all third party claims, demands, suits, or actions (collectively "Claims") brought against any of the Client Parties, and pay reasonable damages, costs, losses, liabilities and expenses (including reasonable attorney's fees) incurred by any of the Client Parties as a result of such Claims, to the extent arising from SPEC's, or its employee's or agent's: (a) willful misconduct; or (b) breach of any provision of this Agreement or any Change Request.

B. **Indemnification Notification and Procedure.** Client will promptly notify SPEC of any claims or potential Claims and give SPEC reasonable assistance in the defense of the Claim. Client will not take any action that impairs SPEC's defense of the Claim. SPEC may not, without Client Party's written consent, settle a claim or stipulate to the entry of a judgment in any manner that admits liability of a Client Party or imposes any obligation on such indemnified party.

4. **Miscellaneous:**

A. If SPEC be delayed at any time in the progress of the work by any act or neglect of Client, or of any employee of either, or by any other contractor employed by Client, or by changes ordered in the work, or any claim under Force Maj Majeure or clause below or by any cause which SPEC shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as SPEC may decide.

B. The parties intend that SPEC, in performing services specified in this Agreement, shall act as an independent contractor and shall have complete control of the work and the manner in which it is performed. SPEC shall be free to contract for similar services to be performed for other customers while supplier is under contract with Client. SPEC is not to be considered an agent or employee of Client and is not entitled to participate in any pension plans, or in bonus, stock, or similar benefits that Client provides for its employees.

C. The personnel furnished pursuant to this Agreement will be, and remain, employees of SPEC, and SPEC will exercise complete control over their conduct and will pay all wages, expenses, social security taxes, federal and state unemployment insurance, and any similar taxes relating to the employees.

D. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL SPEC BE LIABLE TO CLIENT OR TO ANY OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOST PROFITS OR LOSS OF BUSINESS, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHER THEORY OF LIABILITY, REGARDLESS OF WHETHER CLIENT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. IN NO EVENT SHALL SPEC'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE AMOUNTS PAID BY CLIENT TO SPEC UNDER THIS AGREEMENT FOR THE SERVICES, DELIVERABLES OR INVENTION GIVING RISE TO SUCH LIABILITY.

E. **Assignability.** This Agreement will be binding upon Client's heirs, executors, assigns, administrators, and other legal representatives, and will be for the benefit of the Client, its successors, and its assigns. There are no intended third-party beneficiaries to this Agreement, except as expressly stated. Except as may otherwise be provided in this Agreement, Client may not sell, assign or delegate any rights or obligations under this Agreement. Notwithstanding anything to the contrary herein, Client may assign this Agreement and its rights and obligations under this Agreement to any successor to all or substantially all of Client's relevant assets, whether by merger, consolidation, reorganization, reincorporation, sale of assets or stock, change of control or otherwise.

F. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter herein and supersedes all prior written and oral agreements, discussions, or representations between the Parties. Client represents and warrants that Client is not relying on any statement or representation not contained in this Agreement. To the extent any terms set forth in any Estimate or Change Request conflict with the terms set forth in this Agreement, the terms of this Agreement shall control unless otherwise expressly agreed by the Parties in such Estimate or Change Request.

G. Severability. If a court or other body of competent jurisdiction finds, or the Parties mutually believe, any provision of this Agreement, or portion thereof, to be invalid or unenforceable, such provision will be enforced to the maximum extent permissible to effect the intent of the Parties, and the remainder of this Agreement will continue in full force and effect.

H. Modification, Waiver. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in a writing signed by the Parties. Waiver by the Client of a breach of any provision of this Agreement will not operate as a waiver of any other or subsequent breach.

I. Notices. Any notice or other communication required or permitted by this Agreement to be given to a Party shall be in writing and shall be deemed given (i) if delivered personally or by commercial messenger or courier service, (ii) when sent by confirmed facsimile, or (iii) if mailed by U.S. registered or certified mail (return receipt requested), to the Party at the Party's address written below or at such other address as the Party may have previously specified by like notice. If by mail, delivery shall be deemed effective three business days after mailing in accordance with the address stated on the Estimate. The address of a Party to which notices, or other communications shall be mailed may be changed from time to time by giving written notice to the other Parties.

J. Attorneys Fees & Costs. In any court, mediation, arbitration, action at law or equity that is brought by one of the Parties to this Agreement to enforce or interpret the provisions of this Agreement, the prevailing Party will be entitled to reasonable attorneys' fees, in addition to any other relief to which that Party may be entitled.

K. Signatures. This Agreement may be signed in two counterparts, each of which shall be deemed an original, with the same force and effectiveness as though executed in a single document.

L. Force Majeure. Neither Party to this Agreement shall be liable to the other for any loss, cost, or damages, arising out of, or resulting from, any failure to perform (*contract shall be allowed to be extended by SPEC pursuant to Section 4.A. of this Agreement*) in accordance with the terms of this Agreement where the cause of such failure shall include, but not be limited to, acts of God, strikes, lockouts, or other industrial disturbances, wars, whether declared or undeclared, blockades, insurrections, riots, governmental action, explosions, fire, floods, strikes, pandemics or any other unforeseeable cause not within the reasonable control of either party (collectively referred to herein as "Force Majeure Event"). A Force Majeure event does not include an act of negligence or Intentional Wrongdoing by either party. Notwithstanding the foregoing, any party claiming a Force Majeure event shall use reasonable diligence to remove the condition that prevents performance and shall not be entitled to suspend performance of its obligations in any greater scope or for

any longer duration than is required by the Force Majeure event. Each party shall use its best efforts to mitigate the effects of such Force Majeure event, remedy its inability to perform, and resume full performance of its obligations hereunder.

5. Optional Services. SPEC may be able to assist Client in other services in connection, however this Agreement, specifically exclude these services unless Client enters a separate written and signed agreement with Client.

A. Structural Design Engineer ("SDE"). Client acknowledges and understands that the structure being built is a prefabricated, pre-engineered, assembled onsite solution. In certain jurisdictions, the footers may require a local licensed structural engineer to seal and stamp the manufacturer recommended footers based on the local soil conditions. Client is responsible to get obtain a local SDE to provide any certifications required.

Client, acknowledges and understands that SPEC is not responsible for paying for the SDE. This is a separate cost paid by client directly to SPEC. Should Client wish to utilize SPEC's consulting services to identify and retain SDE, this will be a separate cost on a per project basis. Should Client wish to retain SPEC's consulting services for this specific service, Parties will agree in a signed writing that Client is seeking SPEC's assistance to provide this service. SPEC will provide Client with a Retainer Amount to be paid prior to services start. Said retainer will be billed against by SPEC. Any unused portion of the retainer will be refunded. Additionally, should the retainer be insufficient, Client agrees to replenish upon request by SPEC.

B. Permits or Equivalent. Client, acknowledges and understands that it is the Client's responsibility to secure all permits or equivalent associated with the installation of the Project. Further SPEC is not responsible for any application or other submittals to the Accessibility at the Department commonly referred to as the "DSA".

Construction Line Item:

Offload and Storage of all Equipment By Installer	1 Day
Temp Fence for duration of project	1 Day
Stockpile Existing EWF for Re-Use	1 Day
Demo Disposal of Existing Equipment	1 Day
Installation of Equipment per design 137-197244-1 to manufacturer inground recommendations through soil. Footing spoils disposed off-site. Installation of (2) SM Benches and Cornhole Boards included.	16 Days
Additional EWF to meet ASTM/CPSC requirements, estimated 25-35 c/y	
	1 Day
3rd Party CPSI Inspection in both areas (2-5 and 5-12)	
	1 Day

Installation Estimated Total: 22 Days
Equipment Manufacturing: 5-7 Weeks
Equipment Shipping (Dedicated Truck) 2-3 Days

Loch Lomond Park | Anticipated Schedule

Exhibit B:
Insurance Requirements
(Construction Contracts)

Contractor shall procure and maintain for the duration of the contract, *and for five (5) years thereafter*, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

- 1. Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- 2. Automobile Liability:** Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
- 3. Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.
- 4. Surety Bonds** as described below.

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City of Stockton. The City of Stockton may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by

either the named insured or City of Stockton. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000 unless approved in writing by City of Stockton. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City of Stockton may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named Insured. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City of Stockton reserves the right to obtain a copy of any policies and endorsements for verification.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **The City of Stockton, its officers, officials, employees, and volunteers are to be covered as additional insureds** on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used). Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.
2. For any claims related to this project, the **Contractor's insurance coverage shall be primary and non-contributory** insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City of Stockton, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies. The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to the sole negligence of the Named Insured.
3. Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the City of Stockton.

Claims Made Policies (Professional & Pollution only)

If any coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
3. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the City of Stockton for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Umbrella or Excess Policies

The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City of Stockton.

Waiver of Subrogation

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed**

with a waiver of subrogation in favor of the City of Stockton for all work performed by the Contractor, its employees, agents and subcontractors.

Verification of Coverage

Contractor shall furnish the City of Stockton with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause **and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements**. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City of Stockton before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all requirements stated herein, and Contractor shall ensure that City of Stockton is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

Duration of Coverage

CGL & Excess liability policies **for any construction related work, including, but not limited to, maintenance, service, or repair work**, shall continue coverage for a minimum of 5 years for Completed Operations liability coverage. Such Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work**.

Surety Bonds

Contractor shall provide the following Surety Bonds:

1. Performance Bond
2. Payment Bond
3. Maintenance Bond

The Payment Bond and the Performance Bond shall be in a sum equal to the contract price. If the Performance Bond provides for a one-year warranty a separate Maintenance Bond is not necessary. If the warranty period specified in the contract is for longer than one year a Maintenance Bond equal to 10% of the contract price is required. Bonds shall be duly executed by a responsible corporate surety, authorized to

issue such bonds in the State of California and secured through an authorized agent with an office in California.

Special Risks or Circumstances

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

Certificate Holder Address

The address for mailing certificates, endorsements and notices shall be:

City of Stockton
Its Officers, Officials, Employees and Volunteers
400 E Main Street, 3rd Floor – HR
Stockton, CA 95202

**CITY OF STOCKTON, CALIFORNIA
CITY MANAGER ADMINISTRATIVE DIRECTIVE**

EXHIBIT 2
EXHIBIT C

Subject: DISCRIMINATION AND HARASSMENT POLICY	Directive No. HR-15	Page No. 1 of 14
	Effective Date: 5/1/2015	Revised From: 7/27/09 4/6/09 3/1/2010 (see below)

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

I. PURPOSE

The purpose of this policy is to reaffirm the City's commitment to demonstrating respect for all individuals by strictly prohibiting discrimination and harassment, including sexual harassment in the workplace. This policy defines prohibited behavior and conduct, and sets forth a procedure for reporting, investigating and resolving complaints of discrimination, harassment, in the workplace, including retaliation and hostile work environment.

II. POLICY

- A. The City of Stockton prohibits any form of discrimination and/or harassment of any person based on race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other category or attribute consistent with state or federal law. All such discrimination and harassment is unlawful and shall not be tolerated. In addition, under the federal Affordable Care Act (ACA), the City of Stockton prohibits discrimination and/or harassment, or retaliation against an employee who obtains coverage, receives a tax credit or subsidy through the Health Care "Market Place" or "Exchange."
- B. It is an unlawful employment practice to discriminate against or to harass an unpaid intern or volunteer on the basis of any legally protected classification unless an exception applies, such as a bona fide occupational qualification.
- C. The City will neither tolerate nor condone discrimination and/or harassment of employees by managers, supervisors, co-workers, or non-employees with whom City employees have a business service, or professional relationship.
- D. All City employees and non-employees share a responsibility to assist in

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maintaining an employment environment free of discrimination and harassment. This policy applies to all aspects of City employment, including, but not limited to, hiring, reassignment, placement, promotion, employment action, disciplinary action, layoff, reemployment, transfer, leave of absence, compensation and benefits, training; or other terms of treatment of that person in an unpaid internship, or another limited duration program to provide unpaid work experience for that person, or the harassment of an unpaid intern or volunteer.

- E. All allegations of discrimination and/or harassment shall be investigated immediately by the City, in accordance with this policy. If it is determined that any prohibited activity has occurred, remedial action shall be taken. Such action may include discipline up to and including discharge. In addition, under applicable law, individual supervisors and employees may be subject to personal liability and/or punitive damages in any litigation arising as a result of such conduct.
- F. All new hires shall attend harassment awareness training, and supervisors and managers shall attend harassment awareness and prevention training for supervisors every two years.
- G. The City of Stockton prohibits retaliation against any employee or non-employee by another employee, non-employee, supervisor, or manager for reporting, filing, testifying, assisting or participating in any manner in any investigation, proceeding, or hearing conducted by the employer or a federal or state enforcement agency.
- H. This policy applies to all officials, employees, volunteers, unpaid interns, agents, or contractors of the City.
- I. This policy shall be administered by the Director of Human Resources.

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III. DEFINITION AND EXAMPLES OF DISCRIMINATION AND HARASSMENT

- A. "Discrimination," as used in this policy, is any action, behavior, practice, or process that is intended to deny, or results in the denial of, employment rights, privileges, or benefits because of a person's race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other prohibition identified under state and federal law. The following are examples of conduct that may constitute discrimination:
1. Soliciting applications from a source where all or most of potential workers are of the same race or color.
 2. Considering a person's gender as the basis for differences in pay, work assignments, performance evaluations, training, discipline, or any other area of employment; and
 3. Questioning a job applicant about the existence, nature and severity of a disability.
- B. "Harassment," as used in this policy, consists of any conduct affecting another person because of his or her race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other category or attribute identified under state and federal law when such conduct has the purpose or the effect of: (1) creating an intimidating, hostile or offensive work environment; (2) unreasonably interfering with the employee's or non-employee's work performance; or (3)

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otherwise adversely affecting an employee's or non-employee's employment opportunities.

Harassment may take many forms, including, but not limited to, the following examples:

1. Verbal Harassment: Epithets, derogatory and offensive comments or slurs based on race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
 2. Physical Harassment: Assault, impeding or blocking movement that results in the physical interference with normal work or movement on the basis of race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
 3. Visual Harassment: The displaying of posters, photography, notices, bulletins, e-mails, cartoons or drawings with derogatory and offensive content based on race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
- C. "Sexual harassment," as used in this policy, is a subcategory of harassment, and is specifically defined by law as unwanted sexual advances, requests for sexual favors or visual, verbal or physical conduct of a sexual nature when:
1. Submission to such conduct is made a term or condition of employment; or
 2. Submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or

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3. Such conduct has the purpose or effect of unreasonably interfering with an employee's or non-employee's work performance or creating an intimidating, hostile or offensive working environment because of the persistent, severe or pervasive nature of the conduct.

Examples of Sexual Harassment include, but are not limited to the following:

- a. Unwelcome sexual overtures or propositions.
- b. Offering employment benefits or status in exchange for sexual favors.
- c. Making or threatening retaliation after a negative response to sexual advances.
- d. Visual conduct such as leering, making sexual gestures, displaying sexually suggestive objects or pictures, cartoons, calendars or posters.
- e. Verbal conduct such as using epithets or slurs, telling sexually explicit jokes, or making derogatory or suggestive comments about a person's body or dress.
- f. Written communications of a sexual nature distributed in hard copy, soft copy or via a computer network.
- g. Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, suggestive or obscene letters, notes or invitations.
- h. Physical conduct such as touching, assaulting, impeding or blocking movements.

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- i. Retaliation for making harassment reports or threatening to report harassment.

D. Affordable Care Act (ACA) Anti-Retaliation

Pursuant to section §1558 of the Affordable Care Act, the City prohibits discrimination or retaliation towards any employee who:

1. Receives a health insurance tax credit or subsidy through the Health Care "Marketplace" or "Exchange", by which can trigger a penalty payable by the employer;
2. Reports potential violations of protections afforded under Title I of the Act, which provides guaranteed availability protections among other things;
3. Testifies in a proceeding concerning such violation;
4. Assists or participates in a proceeding concerning a violation; or
5. Objects to, or refuses to participate in, any activity, policy, practice, or assigned task that the employee reasonably believes to be in violation of any provision of the Title I of the Act.

An employee who believes that he or she has been discharged or otherwise discriminated against in violation of section §1558 of the Affordable Care Act may seek relief in accordance with the procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in section 2087(b) of title 15, United States Code.

IV. REPORTING AND COMPLAINT PROCEDURES

A. Immediate Action Required

The City's reporting and complaint procedures provide for an immediate, thorough and objective investigation of discrimination or harassment claims, appropriate disciplinary action taken against any person found to have engaged in prohibited behavior, and appropriate alternative remedies to any

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employee or non-employee subject to discrimination or harassment. To accomplish this, such incidents must be reported immediately to a supervisor or manager.

1. Employee's and Non-Employee's Responsibilities when Subjected to Discrimination and/or Harassment
 - a. Employees or non-employees who believe they have been subjected to discrimination or harassment, or are aware of discrimination or harassment against others, shall report the situation immediately to his/her supervisor or manager, except as specified in subsection (b), below. Employees and non-employees shall report any such incidents occurring in the workplace, whether committed by coworkers, supervisors or managers, or third persons doing business with the City, such as customers or vendors, or other non-employees. If comfortable doing so, an employee or non-employee who has a complaint of discrimination or harassment is encouraged to directly inform the person(s) engaging in the behavior that such conduct is offensive and insist the behavior to stop.
 - b. Employees and non-employees must immediately contact a supervisor or manager to register a complaint of discrimination or harassment, unless that supervisor or manager is the individual engaging in the unwanted behavior. In that case, the employee or non-employee may contact someone at the next supervisory level. If the employee or non-employee feels uncomfortable dealing directly with his or her immediate supervisor or manager, he or she may contact the department head, or the Director of Human Resources (or either of their designees) to register a complaint of discrimination or harassment.
 - c. Employees and non-employees may file a formal complaint of harassment or discrimination with their department head or

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with Human Resources. To assist the City in conducting a thorough investigation, complaints shall be submitted in writing and shall include specific details of the incident(s), the names of the individuals involved, the names of any witnesses, and any documentary evidence (notes, pictures, cartoons, etc.) that will corroborate the allegations.

- d. Employees and non-employees shall immediately report any retaliation to a supervisor, manager, department head or Director of Human Resources (or designee). All retaliation complaints shall be immediately, objectively and thoroughly investigated in accordance with the investigation procedures. If a report of retaliation is substantiated, appropriate disciplinary action, up to and including discharge shall be taken.

2. Supervisor's or Manager's Responsibilities to Eliminate Discrimination and/or Harassment

- a. A supervisor or manager is responsible for enforcing the City's discrimination and harassment policy. Supervisors or managers must ensure that all employees and non-employees are aware of the City's policy through open discussion of the policy at staff meetings and by posting the policy in a conspicuous location accessible to all staff members.
- b. A supervisor or manager shall be cognizant of employees' and non-employees' behavior and shall not permit any employee or non-employee under their supervision to be subjected to or engage in any conduct prohibited by this policy.
- c. A supervisor or manager who observes conduct prohibited by this policy shall immediately direct the employee or non-employee to cease the conduct.

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- d. A supervisor or manager who receives a complaint of prohibited conduct is required to take the complaint seriously, and report the matter immediately to the department head; be supportive of the complainant; ensure there is no retaliation against the complainant; conduct an internal fact-finding review into the allegations; obtain as much detailed information as possible; thoroughly document the findings; communicate in written form to the parties the resolution of the complaint; and report to and consult with the Human Resources Department promptly, without delay.
- B. Confidentiality. The City will make every effort to protect the privacy and confidentiality of all parties involved, as well as any information and/or documentation obtained, to the extent possible consistent with a thorough investigation.
- C. Penalty for Non-Compliance. The City shall take disciplinary action, up to and including discharge, against any supervisor or manager who fails in his/her responsibility to take immediate action in response to an employee's or non-employee's complaint of discrimination or harassment. Further, such disciplinary action shall be taken against a supervisor or manager who fails to stop discriminatory or harassing conduct committed in his/her presence or to stop such conduct about which the supervisor or manager has knowledge.

V. INVESTIGATION PROCEDURES

A. Determination of Responsibility for Investigation

If a formal complaint is filed with the department head or the Director of Human Resources (or either of their designees), the department head and the Director of Human Resources shall consult with one another to determine whether the department or Human Resources shall conduct the fact-finding investigation into the allegations. Either the department head or the Director of Human Resources (or either of their designees), depending on who is

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PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98
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responsible for the investigation, shall issue written notification to the complainant and alleged harasser(s). The notification shall specify the nature of the complaint, and inform the parties that an investigation into the allegations of discrimination and/or harassment shall be conducted.

B. Investigative Guidelines

The investigation shall include the following steps taken in the order best suited to the circumstances:

1. Identify and preserve the evidence.
2. Confirm the name and position of the complainant. Interview the complainant.
3. Allow the complainant the opportunity to place the complaint in writing.
4. Obtain the identity of the alleged harasser(s).
5. Obtain as many details as possible regarding the incident(s) that prompted the complaint, including the number of occurrences, dates, times, locations, and witnesses (if applicable).
6. Ascertain how the complainant felt about the alleged incident when it occurred; complainant's response(s) to the alleged behavior; and witness statements (if applicable).
7. Ascertain if any threats or promises were made in connection with the alleged harassment.
8. Ascertain if the complainant knows of or suspects that there are other victims of harassment by the same person(s).
9. Ascertain whether the complainant has spoken to anyone, especially

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supervisors, about the harassment.

10. Ascertain what resolution would be acceptable to the complainant.
11. Interview the alleged harasser to get his or her side of the story, including any possible motivation for a false allegation.
12. Interview witnesses who were identified by the complainant regarding the alleged harasser or other persons identified during the investigation.
13. Interview witnesses who were identified by the alleged harasser or other persons identified during the investigation.
14. Advise all participants that the investigation is "confidential" and not to engage in any retaliatory conduct, as such conduct is subject to disciplinary action up to and including discharge. Confidentiality will be maintained to the extent possible. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by a supervisor or the Director of Human Resources. Any individual who discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction.
15. Conduct follow-up interviews, if warranted.
16. Prepare report of findings and discuss with management and designated legal staff.

VI. RESPONDING TO THE COMPLAINT

- A. Following the completion of the fact-finding investigation, either the department head or the Director of Human Resources (or either of their designees), depending on who is responsible for the investigation, shall

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make a report of findings, along with a recommendation regarding the appropriate remedial action to be taken, if warranted. The recommendation shall be made after reviewing the findings of the investigation, giving consideration to all factual information, the nature of the alleged conduct, and the totality of the circumstances. If the investigation was conducted by the Director of Human Resources, or designee, the Director, or designee, shall confer with the affected department head and both shall concur on the remedial action to be taken, if any. If the investigation was conducted by the department head, the department head shall confer with the Director of Human Resources prior to making the report of findings and both shall concur on the remedial action to be taken, if any.

- B. If either the department head or the Director of Human Resources does not concur with the findings and recommendation of the other, the City Attorney (or designee) shall review and resolve the matter in dispute.
- C. Report of findings and recommendation shall be treated as a confidential document and no other distribution shall be made without first consulting with the City Attorney's Office. A completed investigation report will not be disclosed, except as it is deemed necessary to support a disciplinary action, to take remedial action, to defend the City in adversarial proceedings, or to comply with the law or court order.
- D. Either the department head or the Director of Human Resources (or either of their designees), depending on who is responsible for the investigation shall provide a written response to the complainant and the person alleged to have committed the misconduct, discrimination and/or harassment. The response shall include a copy of the City's discrimination and harassment policy and a memorandum indicating the City's determination as to whether the complaint is:
 - 1. Unsustained: The investigation failed to disclose sufficient evidence to substantiate the allegation(s).
 - 2. Unfounded: The investigation proved that the act(s) or omission(s)

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complained of did not occur. The finding also applies when the individual employee(s) named in the complaint were not involved in the act(s) or omission(s) alleged.

3. Sustained: The investigation disclosed sufficient evidence to substantiate the allegation(s) made in the complaint; appropriate action will be taken.

- E. Details regarding any specific fact-findings or disciplinary action to be taken will not be communicated to the complainant. The City Attorney shall review the response for legal sufficiency before dissemination.
- F. The City shall close and retain the investigation file, in accordance with applicable laws, regulations, and City policy regarding retention of City records.

VII. DISCIPLINE

Disciplinary action imposed as a result of any investigation conducted pursuant to this policy shall be commensurate with the severity of the offense, up to and including discharge, even for a first offense.

VIII. ALTERNATIVE REMEDIES

If upon exhausting all internal remedies to file, investigate, and respond to a charges of discrimination/harassment, pursuant to title VII of the Federal Civil Rights Act of 1964 (42 U.S.C §§ 2000e *et seq.*), any person has a right to file a charge of discrimination/harassment with the Equal Employment Opportunity Commission ("EEOC"). In addition, pursuant to the California Fair Employment and Housing Act (Gov. Code §§ 12900 – 12996.) a person may also file a complaint of discrimination/harassment with the California Department of Fair Employment and Housing ("DFEH"). Employees or non-employees who believe that they have been subjected to discrimination/harassment may file a complaint with either of these

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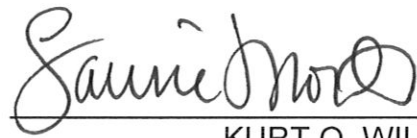
PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

agencies. Both the EEOC and DFEH serve as neutral fact-finders and attempt to assist parties in resolving disputes voluntarily.

IX. COMMUNICATION OF POLICY

This policy shall be provided to all managers, supervisors, employees, volunteers, unpaid interns, agents or contractors of the City and shall be posted in the appropriate places. All employees shall participate in City approved harassment awareness training as directed by management or Human Resources; and all supervisors, as required by law, shall participate in City approved interactive harassment awareness training and education sessions at least once every two years, or as otherwise specified by law.

APPROVED:



KURT O. WILSON
CITY MANAGER

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BOND FOR FAITHFUL PERFORMANCE

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, a **STATE OF CALIFORNIA CORPORATION**, as Principal and _____, a corporation, organized and existing under the laws of the State of _____ authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City of Stockton, a municipal corporation, duly created and existing under and by virtue of the laws of the State of California, as obligee, in the just and full sum of TWO HUNDRED NINETY-THREE THOUSAND THREE HUNDRED ELEVEN DOLLARS AND 21/100 DOLLARS (\$293,311.21), in lawful money of the United States of America (being 100% of the contract price) for the payment whereof well and truly to be made to the said CITY, the said Principal and Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that the above bounded Principal has simultaneously entered into a contract with the CITY, to do and perform the following work, to wit:

**PLAYGROUND AT LOCH LOMOND PARK
(PROJECT NO. WP25029)**

NOW, THEREFORE, if the above bounded Principal, CONTRACTOR, Company or Corporation or its subcontractor, shall well and truly perform the work contracted to be done under said contract, then this obligation to be null and void; otherwise to remain in full force and effect.

No prepayment or delay in payment and no change, extension, addition or alteration of any provision of said contract, or in said plans or specifications agreed to between the said CONTRACTOR and the said CITY, and no forbearance on the part of the said CITY shall operate to relieve any Surety or Sureties from liability on this bond,

and consent by said Surety is hereby given, and the said Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

SIGNED AND SEALED on _____

APPROVED AS TO SURETY:

By: _____
PRINCIPAL

SURETY

APPROVED AS TO FORM & CONTENT:
LORI M. ASUNCION
OFFICE OF THE CITY ATTORNEY

By: _____
ATTORNEY-IN-FACT

By: _____
DEPUTY CITY ATTORNEY

BOND FOR LABOR AND MATERIAL

KNOW ALL MEN BY THESE PRESENTS:

That we, **YOSSO GROUP, INC., DBA SPECIFIED PLAY EQUIPMENT CO.**, a **STATE OF CALIFORNIA CORPORATION**, as Principal and _____, corporation, organized and existing under the laws of the State of _____ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City of Stockton, a municipal corporation, duly created and existing under and by virtue of the laws of the State of California, and unto any and all material suppliers, persons, companies, or corporations furnishing materials, provisions, provender or other supplies used in, upon, for or about the performance of the work contemplated to be executed or performed under the contract hereinafter mentioned, and all persons, companies, or corporations renting or hiring teams, or implements of machinery, for or contributing to said work and all persons who perform work or labor upon the same, and all persons who supply both work and materials, and whose claims have not been paid by the contractor, company or corporation in the just and full sum of TWO HUNDRED NINETY-THREE THOUSAND THREE HUNDRED ELEVEN DOLLARS AND 21/100 DOLLARS (\$293,311.21), in lawful money of the United States of America (being 100% of the contract price) for the payment whereof well and truly to be made to said CITY and to said persons jointly and severally, the said principal and Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligations is such that the above bounden Principal has simultaneously entered into a contract of even date herewith, with the CITY, to do and perform the following work, to-wit:

PLAYGROUND AT LOCH LOMOND PARK (PROJECT NO. WP25029)

NOW, THEREFORE, if the above bounden Principal, CONTRACTOR, Company or Corporation or its subcontractor, fail to pay for all materials, provisions, provender, or other supplies, or teams, used in, upon, for or about the performance of the work

contracted to be done, or for any work or labor done thereon of any kind, the Surety on this bond will pay the same, in an amount not exceeding the sum specified in this bond, provided that any and all claims hereunder shall be filed and proceedings had in connection therewith as required by the provisions of Division 3, Part 4, Title 15, Chapter 5, Article 1 of the Civil Code of California, provided that in case suit is brought upon this bond, a reasonable attorney's fee shall be awarded by the Court to the prevailing party in said suit; said attorney's fee to be fixed as costs in said suit, and to be included in the judgment therein rendered.

No prepayment or delay in payment and no change, extension, addition or alteration of any provision of said contract or in said plans or specifications agreed to between the said CONTRACTOR and the said CITY and no forbearance on the part of the said CITY shall operate to relieve any surety or sureties from liability on this bond, and consent to make such alterations without further notice to or consent by any such surety is hereby given, and the said sureties hereby waive the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

SIGNED AND SEALED on _____.

APPROVED AS TO SURETY:

By: _____
PRINCIPAL

SURETY

APPROVED AS TO FORM & CONTENT:
LORI M. ASUNCION
OFFICE OF THE CITY ATTORNEY

By: _____
ATTORNEY-IN-FACT

By: _____
DEPUTY CITY ATTORNEY