

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Authorize the City Manager to Execute a Contract with Play-Well TEKologies in the Amount of \$180,000 for Three Years
DEPARTMENT:	Recreation, Cultural, and Community Services
PRESENTED BY:	Mary Reidy, Recreation Superintendent
ACTION:	<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

PROBLEM/ISSUE STATEMENT:

To most effectively and efficiently meet the expanding demand for youth camps and sports programs, the City contracts with area service providers. This allows residents access to camps and activities beyond the capacity of only City staffed programs.

Play-Well-TEKologies offers a unique program by bringing their own staff, equipment, and activities to different locations in the City to run LEGO camps. Having programs local and in different locations creates more accessibility for community members, and bringing their own well-trained staff and equipment provides for great service efficiencies.

The City's Recreation and Cultural Services Division (RCS) has been contracting with Play-Well-TEKologies for the past few years. In 2019, there were 15 Play-Well TEKologies programs and camps with 208 registrants. During the COVID-19 pandemic, the number of participants that the camps were allowed to take were lessened due to group size constraints. The City was able to resume typical operations in 2022 resulting in 12 Play-Well TEKologies programs and camps during the summer of 2022 with 279 registrants.

Play-Well-TEKologies provides program offerings for all ages, and their camps are reasonably priced, especially when compared to other more select sport-focused programs for older youth. The contract is set-up for the City to be able to take all registrations, handle marketing via the City's Recreation Guide and website, as well as provide the physical location for the camps to run. The contract is revenue backed with a 70%/30% split based on the resident rate, with the City keeping 30% of the total revenue brought in.

RESOURCE/FINANCIAL IMPACT:

In 2022, the City brought in approximately \$56,600 from Play-Well-TEKologies LEGO camps, with the City's net revenue being around \$16,000. The contract with Play-Well-TEKologies at that time was set at a not to exceed threshold of \$34,999 for the

calendar year. This new proposed contract is for \$180,000 to be used across the span of three years.

RECOMMENDATION

Staff recommends that the City Council move to authorize the City Manager to execute a contract with Play-Well-TEKnologies.

ATTACHMENTS

Attachment A: Play-Well-TEKnologies Contract #10616 Scope of Work

Approved By: City Manager **BE** City Attorney **MK**



Contract 10616

Brief Description: learning through building with legos.

**CITY OF SHORELINE
AGREEMENT FOR RECREATION SERVICES**

This Agreement is entered into by and between the City of Shoreline, Washington, a municipal corporation hereinafter referred to as the "CITY," and Play-Well TEKnologies, hereinafter referred to as the "CONSULTANT" to perform problem solving and fine motor skills through building with legos.

In consideration of the mutual promises and covenants contained herein, it is mutually agreed as follows:

1. Scope of Services to be performed by the Consultant.

The Consultant shall perform the services outlined in Exhibit A. In performing these services, the Consultant shall at all times comply with all federal, state and local statutes, rules and ordinances applicable to the performance of such services. In addition, these services and all duties incidental or necessary therefore, shall be performed diligently and completely and in accordance with professional standards of conduct and performance. All services performed under this Agreement will be conducted solely for the benefit of the City and will not be used for any other purpose without written consent of the City.

2. Compensation.

- A. Services will be paid at the rate set forth in Exhibit A, not to exceed a maximum of \$180,000.00, including all fees and those reimbursable expenses listed in Exhibit A. Reimbursable travel expenses shall not exceed the most recent US Government General Services Administration (GSA) rates. Receipts are required for reimbursement and travel expenses will be paid at GSA rates or actual costs, whichever is lower.
- B. The City shall pay the Consultant for services rendered after receipt of an itemized invoice or billing voucher in the form set forth on Exhibit B. Payments will be processed within 30 (thirty) days from receipt of an itemized invoice or billing voucher. The Consultant shall be paid for services rendered but, in no case shall the total amount to be paid exceed the amount(s) noted in the Exhibit(s) and approved by the City. The consultant shall complete and return a W-9 to the City prior to contract execution by the City. Mail all invoices or billing vouchers to: Accounts Payable, 17500 Midvale Avenue N, Shoreline, WA 98133-4905 or email to accountspayable@shorelinewa.gov.

3. Term.

- A. The term of this contract shall commence June 1, 2023 and end December 31, 2025.

4. Termination.

- A. The City reserves the right to terminate this Agreement at any time, with or without cause by giving fourteen (14) days' notice to Consultant in writing. In the event of such termination or suspension, all finished or unfinished documents, data, studies, worksheets, models and reports, or other material prepared by the Consultant pursuant to this Agreement shall be submitted to the City.
- B. In the event this Agreement is terminated by the City, the Consultant shall be entitled to payment for all hours worked and reimbursable expenses incurred to the effective date of termination, less all payments previously made. This provision shall not prevent the City from seeking any

legal remedies it may have for the violation or nonperformance of any of the provisions of this Agreement and any such charges due the City shall be deducted from the final payment due the Consultant. No payment shall be made by the City for any expenses incurred or work done following the effective date of termination unless authorized in advance in writing by the City.

- C. The Consultant reserves the right to terminate this Agreement with not less than sixty (60) days written notice, or in the event outstanding invoices are not paid within 30 days.
- D. If the Consultant is unavailable to perform the scope of services, the City may, at its option, cancel this Agreement immediately.

5. Ownership of Documents.

- A. All documents, data, drawings, specifications, software applications and other products or materials produced by the Consultant in connection with the services rendered under this Agreement shall be the property of the City whether the project for which they are made is executed or not. All such documents, products and materials shall be forwarded to the City at its request and may be used by the City as it sees fit. The City agrees that if the documents, products and materials prepared by the Consultant are used for purposes other than those intended by the Agreement, the City does so at its sole risk and agrees to hold the Consultant harmless for such use.
- B. The Consultant acknowledges that the City is a public agency subject to Washington's Public Records Act, chapter 42.56 RCW, and that all documents produced by the Consultant in connection with the services rendered under this Agreement may be deemed a public record as defined in the Public Records Act and that if the City receives a public records request, unless a statute exempts disclosure, the City must disclose the record to the requestor. All or portions of materials, products and documents produced under this Agreement may be used by the Consultant if the City confirms that they are subject to disclosure under the Public Disclosure Act.
- C. The Consultant shall preserve the confidentiality of all City documents and data accessed for use in Consultant's work product. Any requests for City documents and data held by Consultant shall be forwarded to the City which shall be solely responsible for responding to the request.

6. Independent Contractor Relationship.

- A. The Consultant is retained by the City only for the purposes and to the extent set forth in this Agreement. The nature of the relationship between the Consultant and the City during the period of the services shall be that of an independent contractor, not employee. The Consultant, not the City, shall have the power to control and direct the details, manner or means of services. Specifically, but not by means of limitation, the Consultant shall have no obligation to work any particular hours or particular schedule, unless otherwise indicated in the Scope of Work where scheduling of attendance or performance is critical to completion, and shall retain the right to designate the means of performing the services covered by this Agreement, and the Consultant shall be entitled to employ other workers at such compensation and on such other conditions as it may deem proper, provided, however, that any contract so made by the Consultant is to be paid by it alone, and that employing such workers, it is acting individually and not as an agent for the City.
- B. The City shall not be responsible for withholding or otherwise deducting federal income tax or Social Security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to Consultant or any employee of the Consultant.
- C. If the Consultant is not available to provide services on a specific day or for a period of time, a substitute may be utilized subject to the City's approval. Consultant shall submit the name(s) of qualified substitutes it intends to utilize to the City within fifteen (15) days after execution of this Agreement. The City may require the substitute to provide licensing and consent to a criminal background check as provided in Section 11. Consultant shall notify the City that a substitute will be used as soon as possible after the Consultant is aware of the need for a

substitute. Consultant shall be responsible for any payment to the substitute and for all costs incurred by the City in relation to the substitute.

7. Hold Harmless.

The Consultant shall defend, indemnify, and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees resulting from the negligent, gross negligent and/or intentional acts, errors or omissions of the Consultant, its agents or employees arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purpose of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

8. Gifts.

The City's Code of Ethics and Washington State law prohibit City employees from soliciting, accepting, or receiving any gift, gratuity or favor from any person, firm or corporation involved in a contract or transaction. To ensure compliance with the City's Code of Ethics and state law, the Consultant shall not give a gift of any kind to City employees or officials.

9. City of Shoreline Business License.

If required by SMC 5.05.030, the Consultant shall obtain a City of Shoreline Business License prior to performing any services and maintain the business license in good standing throughout the term of its agreement with the City.

10. Insurance.

Consultant shall obtain insurance of the types described below during the term of this Agreement and extensions or renewals. These policies are to contain, or be endorsed to contain, provisions that:

- i. Consultant's insurance coverage shall be primary insurance with insurance or insurance pool coverage maintained by the City as excess of the Consultant's insurance (except for professional liability insurance); and
 - ii. Consultant's insurance coverage shall not be cancelled, except after thirty (30) days prior written notice to the City.
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- A. Professional Liability, Errors or Omissions insurance with limits of liability not less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit shall be provided if services delivered pursuant to their Contract involve or require professional services provided by a licensed professional including but not limited to engineers, architects, accountants, surveyors, and attorneys.
 - B. Commercial General Liability insurance covering premises, operations, independent contractors' liability and damages for personal injury and property damage with a limit of no less than \$1,000,000 each occurrence and \$2,000,000 general aggregate. The City shall be named as an additional insured on this policy. The Consultant shall submit to the City a copy of the insurance certificate and relevant endorsement(s) as evidence of insurance coverage acceptable to the City.

- C. Automobile Liability insurance with combined single limits of liability not less than \$1,000,000 for bodily injury, including personal injury or death and property damage shall be required if delivery of service directly involves Consultant use of motor vehicles.

11. Consultant's Personnel Background.

The Consultant understands that the work to be performed under this Agreement may involve the Consultant or the Consultant's personnel having unsupervised access to children under sixteen years of age, developmentally disabled persons, or vulnerable adults as those terms as defined in RCW 43.43.830. The Consultant consents for the City to perform a background check for the Consultant and its personnel, if the City deems it necessary. At any time, the City may request copies of the background checks performed by the Consultant on itself or its personnel. The Consultant certifies that he/she or none of its personnel who will or may be given such access shall not have:

- A. Been convicted of any offense against children or other persons, as defined in RCW 43.43.830; or
- B. Been convicted of any crimes related to financial exploitation, where the victim was a vulnerable adult, as defined in RCW 43.43.830; or
- C. Been adjudicated in any civil action to have committed child abuse, as defined in RCW 43.43.830; or
- D. Had a disciplinary board final decision rendered against he/she/them or has been convicted of criminal charges associated with a disciplinary board final decision, as defined in RCW 43.43.830.

12. Force Majeure.

Neither party shall be liable to the other or deemed in breach or default for any failure or delay in performance under this Agreement during the time and to the extent its performance is prevented by reasons of Force Majeure. For the purposes of this Agreement, Force Majeure means an occurrence that is beyond the reasonable control of and without fault or negligence of the party claiming force majeure and which, by exercise of due diligence of such party, could not have been prevented or overcome. Force Majeure shall include natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; freight embargoes; epidemics; quarantine restrictions; labor strikes; boycotts; terrorist acts; riots; insurrections; explosions; and nuclear accidents. A party claiming suspension or termination of its obligations due to force majeure shall give the other party prompt written notice, but no more than two (2) working days after the event, of the impediment and its effect on the ability to perform; failure to provide such notice shall preclude recovery under this provision.

13. Successors and Assigns.

Neither the City nor the Consultant shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the written consent of the other.

14. Nondiscrimination.

In hiring or employment made possible or resulting from this Agreement, there shall be no unlawful discrimination against any employee or applicant for employment because of sex, age (except minimum age and retirement provisions), race, color, creed, national origin, citizenship or immigration status (except if authorized by federal or state law, regulation, or government contract), marital status, sexual orientation, honorably discharged veteran or military status, the presence of any sensory, mental, or physical handicap or the use of a trained dog guide or service animal by a person with a disability, unless based upon a bona fide occupational qualification. This requirement shall apply to but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. No person shall be denied or subjected to discrimination in receipt or the benefit of any services or

activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, national origin, age (except minimum age and retirement provisions), citizenship or immigration status (except if authorized by federal or state law, regulation, or government contract), marital status, sexual orientation, honorably discharged veteran or military status, the presence of any sensory, mental or physical handicap, or the use of a trained dog guide or service animal by a person with a disability.

15. Notices.

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears below (as modified in writing from time to time by such party), and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

City Manager
City of Shoreline
17500 Midvale AVE N
Shoreline, WA 98133-4905
(206) 801-2700

Consultant Name: Timothy D. Bowen
Name of Firm: Play-well TEKnologies
Address: 216 Greenfield Avenue
Address: San Anselmo, CA 94960
Phone Number: _____

16. Governing Law and Venue.

This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Venue of any suit between the parties arising out of this Agreement shall be King County Superior Court.

17. General Administration and Management.

The City's contract manager shall be (name and title): Carmen Murrell, Recreation Supervisor.

18. Severability.

Any provision or part of the Agreement 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 and the Consultant, who agree that the Agreement 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.

19. Entire Agreement.

This Agreement contains the entire agreement between the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind any of the parties hereto. Either party may request changes in this Agreement. Proposed changes which are mutually agreed upon shall be incorporated by written amendment to this Agreement.

20. Captions.

The titles of sections or any other parts of this Agreement are for convenience only and do not define or limit the contents.

21. Counterpart Originals.

This Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by a Party shall have the same force and effect as if that Party had signed all other counterparts.

22. Authority to Execute.

Each person executing this Agreement on behalf of a Party represents and warrants that he or she is fully authorized to execute and deliver this Agreement on behalf of the Party for which he or she is signing. The Parties hereby warrant to each other that each has full power and authority to enter into this Agreement and to undertake the actions contemplated herein and that this Agreement is enforceable in accordance with its terms.

This Agreement is executed by

CITY OF SHORELINE

CONSULTANT

By:

By:

Name: Mary Reidy

Name: Timothy Bowen

Title: Superintendent

Title: Principal

Date: _____

Date:

Contract No. 10616

Attachments: Exhibit A (Scope and compensation), B (Billing Voucher)