

RESOLUTION NO. 3089

A RESOLUTION OF THE CITY OF WILSONVILLE APPROVING A CONSTRUCTION CONTRACT WITH BUELL RECREATION LLC FOR THE BOONES FERRY PLAYGROUND PROJECT.

WHEREAS, the City is a member of the National Purchasing Partners Government (NPPGov); and

WHEREAS, (NPPGov) provided procurement assistance for the Boones Ferry Playground project, as described in the contract; and

WHEREAS, Buell Recreation LLC. is a vendor of NPPGov; and

WHEREAS, Buell Recreation LLC represents that Buell Recreation LLC is qualified to perform the Boones Ferry replacement work, as described in the Construction Contract, attached hereto as **Exhibit A.**; and

WHEREAS, Buell Recreation LLC is prepared to perform this Contract in accordance with all the terms and conditions as set forth in this contract; and

WHEREAS, selection of this Buell Recreation LLC through NPPGov follows public contracting requirements.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Manager is authorized to execute a Construction Contract with Buell Recreation LLC. for the Boones Ferry Playground project, as the form substantially similar to the attached **Exhibit A.**
2. This resolution becomes effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 6th day of November 2023, and filed with the Wilsonville City Recorder this date.

DocuSigned by:
Julie Fitzgerald
8A974AF3ADE042E...

Julie Fitzgerald, Mayor

ATTEST:

DocuSigned by:
Kimberly Veliz
E781DE10276B498...

Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald	Yes
Council President Akervall	Yes
Councilor Linville	Yes
Councilor Berry	Yes
Councilor Dunwell	Yes

EXHIBIT:

A. Construction Contract

**CITY OF WILSONVILLE
COOPERATIVE PROCUREMENT
CONSTRUCTION CONTRACT**

This Cooperative Procurement Construction Contract (“Contract”) for the Boones Ferry Park Restroom Demolition and Replacement Project (“Project”) is made and entered into on this _____ day of November 2023 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Buell Recreation LLC**, an Oregon limited liability company (hereinafter referred to as “Contractor”).

RECITALS

WHEREAS, the Oregon Revised Statutes authorize cooperative procurements in accordance with ORS 279A.200, et seq.; and

WHEREAS, the City has need for the services of an entity with the particular training, ability, knowledge, and experience as possessed by Contractor; and

WHEREAS, Contractor represents that Contractor is qualified to perform the construction services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Contractor is prepared to provide such services, as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Contract Documents

This Contract includes and incorporates by reference all of the foregoing Recitals, all of the following additional “Contract Documents,” and any and all terms and conditions set forth in such Contract Documents: League of Oregon Cities Park, Playground, and Recreation Equipment Solicitation No. 2060, dated October 14, 2020; Contractor’s bid submitted in response thereto; Master Price Agreement between League of Oregon Cities and Buell Recreation, LLC, Contract No. PS21130, for Park, Playground, and Recreation Equipment, dated March 26, 2021, and all attachments thereto (the “Master Contract”); 2017 City of Wilsonville Public Works Standards; 2010 ADA Standards for Accessible Design, as amended; 2017 ICC A117.1 Accessible and Usable Buildings and Facilities; and the provisions of Oregon Revised Statutes (ORS) 279C, as more particularly set forth in this Contract. Any conflict between this Contract and the Master Contract shall be resolved in favor of this Contract. This Contract, the attached exhibits, and the Master Contract shall be collectively referred to as the “Contract Documents.” All Contract Documents should be read in concert and Contractor is required to bring any perceived inconsistencies to the attention of the City before executing this Contract. In the event a provision of this Contract conflicts with standards or

requirements contained in any of the foregoing Contract Documents, the provision that is more favorable to the City, as determined by the City, will apply.

Section 2. Scope of Work

Contractor will supply the new equipment and perform the installation services, as more particularly described in the Proposal/Scope of Work attached hereto as **Exhibit A** and incorporated by reference herein (the “Work”). Contractor shall diligently perform the Work according to the requirements identified in the Scope of Work and Contract Documents.

Section 3. Term

The term of this Contract shall be from the Effective Date until all Work required to be performed hereunder is completed and accepted, or no later than June 30, 2024, whichever occurs first, unless earlier terminated in accordance herewith or an extension of time is agreed to, in writing, by the City.

Section 4. Contractor’s Work

4.1. All written documents, drawings, and plans submitted by Contractor in conjunction with the Work shall bear the signature, stamp, or initials of Contractor’s authorized Project Manager. Any documents submitted by Contractor that do not bear the signature, stamp, or initials of Contractor’s authorized Project Manager, will not be relied upon by the City. Interpretation of plans and answers to questions regarding the Work given by Contractor’s Project Manager may be verbal or in writing, and may be relied upon by the City, whether given verbally or in writing. If requested by the City to be in writing, Contractor’s Project Manager will provide such written documentation.

4.2. The existence of this Contract between the City and Contractor shall not be construed as the City’s promise or assurance that Contractor will be retained for future services beyond the Work described herein.

4.3. Contractor shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Contractor may have access by reason of this Contract. Contractor warrants that Contractor’s employees assigned to perform any of the Work provided in this Contract shall be clearly instructed to maintain this confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Contract.

Section 5. Contract Sum and Payment

5.1. Except as otherwise set forth in this **Section 5**, the City agrees to pay Contractor the fixed price of SEVEN HUNDRED FORTY-EIGHT THOUSAND TWO HUNDRED SIXTY-FOUR DOLLARS (\$748,264) for performance of the Work (“Contract Sum”). Any compensation in excess of the Contract Sum will require an express written Change Order between the City and Contractor.

5.2. During the course of Contractor’s performance, if the City, through its Project Manager, specifically requests Contractor to provide additional services beyond the Work described in the Contract Documents, Contractor shall provide such additional services and bill the City a

reasonable agreed upon fee, pursuant to a written Change Order, executed in compliance with the provisions of **Section 24**.

5.3. Contractor will be paid for Work for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice. In that instance, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Contractor as promptly as is reasonably possible.

5.4. The City will be responsible for the direct payment of required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, permitting, and all other similar fees resulting from this Project that are not specifically otherwise provided for in the Contract Documents.

5.5. Contractor's Contract Sum is all inclusive and includes, but is not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits, and all other contributions and benefits, technology and/or software charges, licensing, trademark, and/or copyright costs, office expenses, travel expenses, mileage, and all other indirect and overhead charges, including, but not limited to, the Oregon Corporate Activity Tax (CAT).

Section 6. Prevailing Wages

This is a Contract for a Public Works Project, subject to ORS 279C.800 to 279C.870. Therefore, not less than the current applicable state prevailing wage must be paid on this Project. Wage rates for this project are those published by the Bureau of Labor and Industries (BOLI), effective July 5, 2023, and all subsequent amendments. The BOLI prevailing wage rate for public works contracts can be found at the following website: <http://www.oregon.gov/boli/employers/pages/prevailing-wage-rates.aspx>. Because this is a public works contract subject to payment of prevailing wages, each worker in each trade or occupation employed in the performance of the Work, either by Contractor, a subcontractor, or other person doing or contracting to do, or contracting for the whole or any part of the Work, must be paid not less than the applicable state prevailing wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279C.838 and 279C.840, if applicable. If applicable, Contractor must comply with all public contracting wages required by law. If applicable, Contractor and any subcontractor, or their sureties, shall file a certificate of rate of wage as required by ORS 279C.845. If the City determines at any time that the prevailing rate of wages has not been or is not being paid as required herein, it may retain from the moneys due to Contractor an amount sufficient to make up the difference between the wages actually paid and the prevailing rate of wages, and may also cancel the Contract for breach. Contractor shall be liable to the workers affected for failure to pay the required rate of wage, including all fringe benefits under ORS 279C.840(5). If applicable, Contractor must include a contract provision in compliance with this paragraph in every subcontract and shall require each subcontractor to include it in subcontract(s).

See **Contractor's Responsibilities** below and other Contract Documents for additional requirements and responsibilities regarding compliance with wage and hour laws and regulations.

Section 7. Filing of Certified Statement

As required in ORS 279C.845(7), the City will retain twenty-five percent (25%) of any amount earned by Contractor under the Contract until Contractor has filed the certified statements required in ORS 279C.845(1). The City will pay to Contractor the amount withheld within fourteen (14) days after Contractor files the required certified statements. As required in ORS 279C.845(8), Contractor shall retain twenty-five percent (25%) of any amount earned by a first-tier subcontractor on the Project until the first-tier subcontractor has filed with the City the certified statements required in ORS 279C.845(1). Before paying any amount withheld, Contractor shall verify that the first-tier subcontractor has filed the certified statement. Within fourteen (14) days after the first-tier subcontractor files the required certified statement, Contractor shall pay the first-tier subcontractor any amount withheld. Contractor shall require all other sub-subcontractors to file certified statements regarding payment of prevailing wage rates with the City.

Section 8. Reports to Department of Revenue

When a public contract is awarded to a nonresident bidder and the contract sum exceeds Ten Thousand Dollars (\$10,000), Contractor shall promptly report to the Department of Revenue, on forms to be provided by the Department, the total contract sum, terms of payment, length of contract, and such other information as the Department may require, before the City will make final payment on the Contract.

Section 9. City's Rights and Responsibilities

9.1. The City will designate a Project Manager to facilitate day-to-day communication between Contractor and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

9.2. If applicable, the City will pay the required Bureau of Labor and Industries fee of one/tenth of one percent (0.1%) of the Contract Sum, or as required by statute.

9.3. The City reserves the right to reject any bid or to refuse delivery of materials or services at or from any manufacturer, supplier, or contractor with which the City has reasonable grounds to believe is or may be operating in violation of any local, state, or federal law or which is the subject of pending litigation.

9.4. If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the City may, but shall not be obligated to, pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract. The payment of a claim in the manner authorized hereby shall not relieve Contractor or its surety from the obligation with respect to any unpaid claim. If the City is unable to determine the validity of any claim for labor or services furnished, the City may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined, and the claim, if valid, is paid by Contractor or the City. There shall be no final acceptance of the Work under the Contract until all such claims have been resolved.

9.5. Award of this Contract is subject to budget appropriation. Funds are approved for Fiscal Year 2023-24. If not completed within this fiscal year, funds may not be appropriated for the next fiscal year. The City also reserves the right to terminate this Contract early, as described in **Section 22**.

Section 10. City's Project Manager

The City's Project Manager is Dustin Schull. The City shall give Contractor prompt written notice of any re-designation of its Project Manager.

Section 11. Contractor's Project Manager

Contractor's Project Manager is Kati Radziwon. In the event that Contractor's Project Manager is changed, Contractor shall give the City prompt written notification of such re-designation. Recognizing the need for consistency and knowledge in the administration of the Project, Contractor's Project Manager will not be changed without the written consent of the City, which consent shall not be unreasonably withheld. In the event the City receives any communication from Contractor that is not from Contractor's Project Manager, the City may request verification by Contractor's Project Manager, which verification must be promptly furnished.

Section 12. Project Information

Except for confidential information designated by the City as information not to be shared, Contractor agrees to share Project information with, and to fully cooperate with, those corporations, firms, contractors, public utilities, governmental entities, and persons involved in the Project. No information, news, or press releases related to the Project, whether made to representatives of newspapers, magazines, or television and radio stations, shall be made without the written authorization of the City's Project Manager.

Section 13. Duty to Inform

If at any time during the performance of this Contract, Contractor becomes aware of actual or potential problems, faults, environmental concerns, or defects in the Project, Contract Documents, or Work, or any portion thereof; or of any nonconformance with federal, state, or local laws, rules, or regulations; or if Contractor has any objection to any decision or order made by the City with respect to such laws, rules, or regulations, Contractor shall give prompt written notice thereof to the City's Project Manager. Any delay or failure on the part of the City to provide a written response to Contractor shall neither constitute agreement with nor acquiescence to Contractor's statement or claim, nor constitute a waiver of any of the City's rights.

Section 14. Subcontractors and Assignments

14.1. Unless expressly authorized in writing by the City, pursuant to **Subsection 15.3**, Contractor shall not subcontract with others for any of the Work prescribed herein. Contractor shall not assign any of Contractor's rights acquired hereunder without obtaining prior written approval from the City. Some Work may be performed by persons other than Contractor, provided Contractor advises the City of the names of such subcontractors and the services which they intend to provide,

and the City specifically agrees, in writing, to such subcontracting. The City hereby agrees that Contractor will contract with Earthworks LLC and Pro Turf Solutions to provide some of its site preparation and playground installation services, which are a critical part of this Contract. Contractor acknowledges such services will be provided to the City pursuant to a subcontract(s) between Contractor and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). Unless otherwise specifically provided by this Contract, the City incurs no liability to third persons for payment of any compensation provided herein to Contractor. Any attempted assignment of this Contract without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Contractor shall not be subject to additional reimbursement by the City.

14.2. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Contract. Contractor shall cooperate with the City and other firms, engineers, or subcontractors on the Project so that all portions of the Project may be completed in the least possible time and within normal working hours. Contractor shall furnish other engineers, subcontractors, and affected public utilities, whose designs are fitted into Contractor's design, detail drawings giving full information so that conflicts can be avoided.

Section 15. Contractor's Responsibilities

This Contract is a public works contract governed by the laws found at ORS Chapter 279C, which Contractor must be familiar with and adhere to. Those required provisions include but are not limited to all of the following:

15.1. Except as otherwise provided under ORS 30.265, the performance under this Contract is at Contractor's sole risk. All damages or loss to Work, equipment, or materials incurred during the performance of the Work shall be at Contractor's sole risk. Any injury to persons or property incurred during the performance of the Work shall be at Contractor's sole risk. The service or services to be rendered under the Contract are those of an independent contractor who is not an officer, employee, or agent of the City, as those terms are used in ORS 30.265. Notwithstanding the Oregon Tort Claims Act or provisions of any other contract, Contractor is acting as and assumes liability of an independent contractor as to claims between the City and Contractor. Contractor is solely liable for any workers compensation coverage, social security, unemployment insurance or retirement payments, and federal or state taxes due as a result of payments under the Contract. Any subcontractor hired by Contractor shall be similarly responsible. Contractor shall be liable to the City for any failure of any subcontractor(s) to comply with the terms of the Contract.

15.2. Contractor is an independent contractor for all purposes and shall be entitled to no compensation other than the Contract Sum provided for under **Section 5** of this Contract. Contractor will be solely responsible for determining the manner and means of accomplishing the end result of Contractor's Work. The City does not have the right to control or interfere with the manner or method of accomplishing said Work. The City, however, will have the right to specify and control the results of Contractor's Work so such Work meets the requirements of the Project.

15.3. The City understands and agrees that Contractor may request that some Work be performed on the Project by persons or firms other than Contractor, through a subcontract with Contractor. Contractor acknowledges that if such Work is provided to the City pursuant to a

subcontract(s) between Contractor and those who provide such services, Contractor may not utilize any subcontractor(s), or in any way assign its responsibility under this Contract, without first obtaining the express written consent of the City. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Contractor. References to “subcontractor” in this Contract mean a subcontractor at any tier.

15.4. Contractor shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Contractor’s use of such subcontractor(s) and subcontractor’s negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Contractor shall require that all of Contractor’s subcontractors also comply with, and be subject to, the provisions of this **Section 15** and meet the same insurance requirements of Contractor under this Contract.

15.5. Contractor must make prompt payment for any claims for labor, materials, or services furnished to Contractor by any person in connection with this Contract as such claims become due. Contractor shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Contractor. If Contractor fails, neglects, or refuses to make prompt payment of any such claim, the City may pay such claim to the person furnishing the labor, materials, or services, and offset the amount of the payment against funds due, or to become due, to Contractor under this Contract. The City may also recover any such amounts directly from Contractor.

15.6. Contractor must comply with all Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. Contractor shall make all required workers compensation and medical care payments on time. Contractor shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Contractor shall also be fully responsible for payment of salaries, benefits, taxes, and all other charges due on account of any employees. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from Contractor or subcontractor incurred in the performance of this Contract. Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of subcontractors or employees shall be Contractor’s responsibility. Contractor shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses.

15.7. No person shall be discriminated against by Contractor or any subcontractor in the performance of this Contract on the basis of sex, gender, race, color, creed, religion, marital status, age, disability, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Contract, in whole or in part, by the City. Contractor shall comply with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Contract or to the implementation of the Project. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations, and executive orders to the extent they are applicable to the Contract or the implementation of the Project: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules, and regulations; (b) Titles VI and VII of the Civil Rights Act of 1964, as amended; (c) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (d) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (e) Executive Order 11246, as amended; (f) the Health Insurance Portability and Accountability Act of 1996; (g) the Age Discrimination in

Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (i) all regulations and administrative rules established pursuant to the foregoing laws; and (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules, and regulations.

15.8. Contractor certifies that Contractor has not discriminated against minority, women, or small business enterprises in obtaining any subcontract.

15.9. Pursuant with ORS 279C.505(2), by execution of this Contract, Contractor agrees to have an employee drug testing program in place at the time of executing the Contract, acknowledges that such a program will be maintained throughout the Contract period, including any extensions, and shall demonstrate to the City that such drug testing program is in place. The failure of Contractor to have, or to maintain, such a drug-testing program is grounds for immediate termination of the Contract. Contractor shall require each subcontractor providing labor for the Project to also comply with this drug testing program requirement.

15.10. Contractor agrees that the City shall not be liable, either directly or indirectly, in any dispute arising out of the substance or procedure of Contractor's drug testing program. Nothing in this drug testing provision shall be construed as requiring Contractor to violate any legal, including constitutional, rights of any employee, including but not limited to selection of which employees to test and the manner of such testing. The City shall not be liable for Contractor's negligence in establishing or implementing, or failure to establish or implement, a drug testing policy or for any damage or injury caused by Contractor's employees acting under the influence of drugs while performing Work covered by the Contract. These are Contractor's sole responsibilities, and nothing in this provision is intended to create any third party beneficiary rights against the City.

15.11. Contractor is solely responsible for ensuring that any subcontractor selection and substitution is in accordance with all legal requirements. The City shall not be liable, either directly or indirectly, in any dispute arising out of Contractor's actions with regard to subcontractor selection and/or substitution.

15.12. Contractor shall make payment promptly, as due, to all parties supplying to such Contractor labor or material for the prosecution of the Work provided for in the Contract Documents, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.

15.13. By execution of this Contract, as required by ORS 305.385(6), Contractor certifies under penalty of perjury that to the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4).

15.14. Contractor agrees that if Contractor or a first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with this Contract within thirty (30) days after receiving payment from the City or a contractor, Contractor or the first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten (10) day period within which payment is due under ORS 279C.580(3)(a) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due shall be calculated in accordance with ORS 279C.515(2). The amount of interest may not be waived.

15.15. Contractor agrees that if Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

15.16. Contractor shall make payment promptly, as due, to any party furnishing medical, surgical, hospital, or other needed care and attention, incident to sickness or injury, to the employees of Contractor, of all sums which Contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing payment for such service.

15.17. Contractor and all subcontractors shall comply with the provisions of ORS 279C.540 pertaining to maximum hours, holidays, and overtime. With certain exceptions listed below, Contractor shall not require or permit any person to work more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in case of necessity, emergency, or where public policy requires it, and in such cases the person shall be paid at least time and a half for:

15.17.1. All overtime in excess of eight (8) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or

15.17.2. All overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and

15.17.3. All work performed on the days specified in ORS 279C.540(1)(b) for public improvement contracts.

15.18. Contractor and all subcontractors shall comply with the provisions of ORS 279C.545 pertaining to time limitation on claims for overtime and requirements for posting circulars containing said provisions.

15.19. For personal/professional service contracts, as designated under ORS 279A.055, instead of 15.17.1, 15.17.2, and 15.17.3 above, a laborer shall be paid at least time and a half for all overtime worked in excess of forty (40) hours in any one (1) week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 USC §§ 201 to 209 from receiving overtime.

15.20. Contractor shall follow all other exceptions, pursuant to ORS 279B.235 (for non-public improvement contracts) and ORS 279C.540 (for public improvement contracts), including contracts involving a collective bargaining agreement, contracts for services, and contracts for fire prevention or suppression.

15.21. Contractor must give notice to employees who work on a public contract, in writing, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in

a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

15.22. The hourly rate of wage to be paid by any Contractor or subcontractor to employed workers or other persons doing or contracting to do all or part of the work contemplated by a public contract shall be not less than the applicable wage required by law.

15.23. Contractor, its subcontractors, and all employers working under the Contract are subject employers under the Oregon Workers Compensation Law and shall comply with ORS 656.017 and provide the required workers compensation coverage, unless otherwise exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

15.24. In the performance of this Contract, Contractor shall comply with all applicable federal, state, and local laws, municipal codes, regulations, rules, and ordinances, including but not limited to those dealing with public contracts (ORS Chapter 279C) and with the prevention of environmental pollution and the preservation of natural resources (and avoidance of natural resource damages) in the performance of the Contract, including but not limited to ORS 279C.525. To the extent that known environmental and natural resource risks are specifically noted, shown, or specified in the Contract Documents or on the construction drawings, such risks are allocated to Contractor pursuant with ORS 279C.525(8)(a). If new or amended statutes, ordinances, rules, or regulations are adopted, or Contractor encounters a condition not referred to in this Contract, not caused by Contractor, and that was not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws, codes, or regulations dealing with the preservation of the environment, both the City and Contractor shall have all the rights and obligations set forth in ORS 279C.525.

15.25. Contractor shall be liable for any fine imposed against Contractor, the City or the 'Project' as a result of a violation of any laws or permitting requirements by Contractor or any of its subcontractors or their sub-subcontractors or any suppliers.

15.26. Pursuant to ORS 279B.055, Contractor shall use recyclable products to the maximum extent economically feasible, and in full conformance with the Contract Document Specifications, in the performance of the Work.

Section 16. Subcontractor Requirements

16.1. If subcontractors are permitted, Contractor's relations with subcontractors shall comply with ORS 279C.580. Pursuant with ORS 279C.580(3), each subcontract for property or services that Contractor enters into with a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract, shall include:

16.1.1. A payment clause that obligates Contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within ten (10) days out of such amounts as are paid to Contractor by the City under the public improvement contract; and

16.1.2. An interest penalty clause that obligates Contractor, if payment is not made within 30 days after receipt of payment from the City, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause outlined in **Subsection 16.1.1** above. A contractor or first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the City or Contractor when payment was due. The interest penalty period shall begin on the day after the required payment date and end on the date on which payment of the amount due is made and shall be computed at the rate specified in ORS 279C.515(2).

16.2. Contractor shall include in each subcontract, as a condition of performance of such contract, a provision requiring the first-tier subcontractor to include a payment clause and interest penalty clause, conforming to the standards set forth in **Subsections 16.1.1 and 16.1.2** above, in each of its subcontracts and requiring that the same clauses be included in any of the first-tier subcontractors' subcontracts with a lower-tier subcontractor or supplier.

16.3. Contractor shall certify that all subcontractors, as described in ORS 701.005(2), will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 or 701.026, respectively, before the subcontractors commence Work under the Contract.

16.4. In no event shall any subcontract be awarded to any person or entity debarred, suspended, or disqualified from federal, state, or municipal contracting.

16.5. Contractor shall include this Contract by reference in any subcontract and require subcontractors to perform in strict compliance with this Contract.

Section 17. Environmental Laws

17.1. In compliance with the provisions of ORS 279C.525, the following is a list of federal, state, and local agencies, of which the City has knowledge, that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

FEDERAL AGENCIES:

Forest Service
 Defense, Department of
 Environmental Protection Agency
 Bureau of Sport Fisheries and Wildlife
 Bureau of Land Management
 Bureau of Reclamation
 Occupational Safety and Health Administration
 Coast Guard

Agriculture, Department of
 Soil Conservation Service
 Army Corps of Engineers
 Interior, Department of
 Bureau of Outdoor Recreation
 Bureau of Indian Affairs
 Labor, Department of
 Transportation, Department of
 Federal Highway Administration

STATE AGENCIES:

Environmental Quality, Department of
Forestry, Department of
Human Resources, Department of
Soil and Water Conservation Commission
State Land Board

Agriculture, Department of
Fish and Wildlife, Department of
Geology and Mineral Industries, Department of
Land Conservation and Development Commission
National Marine Fisheries Service (NMFS)
State Engineer
Water Resources Board

LOCAL AGENCIES:

County Courts
Port Districts
County Service Districts
Water Districts

City Council
County Commissioners, Board of
Metropolitan Service Districts
Sanitary Districts
Fire Protection Districts

This list may not be all-inclusive, and it is the responsibility of Contractor to know all applicable laws and to comply with them in the performance of this Contract.

17.2. Pursuant with ORS 279C.510(1), if this Contract calls for demolition work, Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

17.3. Pursuant with ORS 279C.510(2), if this Contract calls for lawn or landscape maintenance, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

17.4. Contractor shall be responsible for the immediate clean-up, remediation, reporting, and payment of fines, if any, related to the release of any hazardous substance or material by Contractor or any subcontractor.

17.5. Contractor must maintain a City of Wilsonville or Metro business license at all times while performing Work under this Contract.

Section 18. Indemnity

18.1. Indemnification. Contractor acknowledges responsibility for liability arising out of the performance of this Contract, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Contractor’s negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Contract, or from Contractor’s failure to perform its responsibilities as set forth in this Contract. The review, approval, or acceptance by the City, its Project Manager, or any City employee of documents or other work performed, prepared, or submitted by Contractor shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Contractor of its responsibility to perform in full conformity with the City’s requirements, as set forth in this Contract, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Contractor’s negligent performance of this Contract, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 18.2.** Contractor shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Contractor. As used herein, the term “Contractor” applies to Contractor and

its own agents, employees, and suppliers, and to all of Contractor's subcontractors, including their agents, employees, and suppliers.

18.2. Standard of Care. In the performance of the Work, Contractor agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Contractor's profession practicing in the Portland metropolitan area. Contractor will re-perform any Work not meeting this standard without additional compensation. Contractor's re-performance of any Work, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Contractor's failure to perform in accordance with the applicable standard of care of this Contract and within the prescribed timeframe.

Section 19. Insurance

19.1. Insurance Requirements. Contractor must maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities or Work hereunder. Any and all agents or subcontractors with which Contractor contracts for any portion of the Work must have insurance that conforms to the insurance requirements in this Contract. Additionally, if a subcontractor is an engineer, architect, or other professional, Contractor must require the subcontractor to carry Professional Errors and Omissions insurance and must provide to the City proof of such coverage. The amount of insurance carried is in no way a limitation on Contractor's liability hereunder. The policy or policies maintained by Contractor shall provide at least the following minimum limits and coverages at all times during performance of this Contract:

19.1.1. Commercial General Liability Insurance. Contractor and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Contract, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Contract and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Contract.

19.1.2. Professional Errors and Omissions Coverage. Contractor agrees to carry Professional Errors and Omissions Liability insurance on a policy form appropriate to the professionals providing the Work hereunder with a limit of no less than **\$2,000,000** per claim. Contractor shall maintain this insurance for damages alleged to be as a result of errors, omissions, or negligent acts of Contractor. Such policy shall have a retroactive date effective before the commencement of any work by Contractor on the Work covered by this Contract, and coverage will remain in force for a period of at least three (3) years after termination of this Contract.

19.1.3. Business Automobile Liability Insurance. If Contractor or any subcontractors will be using a motor vehicle in the performance of the Work herein, Contractor shall provide

the City a certificate indicating that Contractor and its subcontractors have business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

19.1.4. Workers Compensation Insurance. Contractor, its subcontractors, and all employers providing work, labor, or materials under this Contract that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.

19.1.5. Insurance Carrier Rating. Coverages provided by Contractor and its subcontractors must be underwritten by an insurance company deemed acceptable by the City, with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

19.1.6. Additional Insured and Termination Endorsements. The City will be named as an additional insured with respect to Contractor's liabilities hereunder in insurance coverages. Additional Insured coverage under Contractor's Commercial General Liability, Automobile Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers." An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder. Contractor must be an additional insured on the insurance policies obtained by its subcontractors performing any of the Work contemplated under this Contract.

19.1.7. Certificates of Insurance. As evidence of the insurance coverage required by this Contract, Contractor shall furnish a Certificate of Insurance to the City. This Contract shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Contractor agrees that it will not terminate or change its coverage during the term of this Contract without giving the City at least thirty (30) days' prior advance notice and Contractor will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

19.2. Primary Coverage. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Contractor shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are "Claims Made" policies,

Contractor will be required to maintain such policies in full force and effect throughout any warranty period.

Section 20. Bonding Requirements

20.1. Payment and Performance Bonds. Contractor shall obtain a Payment Bond and a Performance Bond, each in a form acceptable to the City and from a surety acceptable to the City, and each in the full amount of the Contract Sum.

20.2. Public Works Bond. Pursuant to ORS 279C.830(2), in addition to the Payment and Performance bonds, before starting work on this Contract or any subcontract hereunder, Contractor and all subcontractors, unless exempt under ORS 279C.836(4), (7), (8), or (9), must have on file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in the State of Oregon in the minimum amount of **\$30,000**. The bond must provide that the Contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety's liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under ORS 279C.836, unless the surety sooner cancels the bond. Contractor further certifies that Contractor will include in every subcontract a provision requiring a subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8), or (9).

20.3. Bond Claims. Any notice of claim on a payment or performance bond or public works bond shall comply with the requirements of ORS 279C.605.

Section 21. Warranty

21.1. Contractor's warranties are as set forth in **Exhibit B**, attached hereto and incorporated by reference herein. In addition to, and not in lieu of, any other warranties provided by various manufacturers and suppliers, including the warranties set forth in **Exhibit B**, Contractor fully warrants all Work for a period of one (1) year from the date of Final Acceptance of the Work and shall make all necessary repairs and replacements to remedy, in a manner satisfactory to the City's Project Manager and at no cost to the City, any and all defects, breaks, or failures of the Work or materials occurring within one (1) year following the date of completion due to faulty or inadequate materials or workmanship. Repair of damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of Contractor in performing Contractor's duties and obligations under this Contract, is also covered by the warranty when such defects or damage occur within the warranty period. The one (1) year warranty period shall, with relation to such required repair, be extended one (1) year from the date of completion of such repair.

21.2. If Contractor, after written notice, fails within **ten (10) days** to proceed to comply with the terms of this Section, the City may have the defects corrected, and Contractor and Contractor's surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the City's Project Manager, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor, and Contractor or Contractor's surety shall pay the cost of repairs.

Failure of the City's Project Manager to act in case of an emergency shall not relieve Contractor or Contractor's surety from liability and payment of all such costs.

21.3. Current State Law (ORS 12.135) provides for a ten (10) year period, from the time of Substantial Completion, for the City to file a claim for repairs of defective Work due to Contractor's improper use of materials and/or workmanship, and Contractor agrees it is bound thereby.

Section 22. Early Termination; Default

22.1. This Contract may be terminated prior to the expiration of the agreed upon terms:

22.1.1. By mutual written consent of the parties;

22.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Contractor by mail or in person. The City retains the right to elect whether or not to proceed with actual construction of the Project; or

22.1.3. By the City if Contractor breaches this Contract and fails to cure the breach within ten (10) days of receipt of written notice of the breach from the City.

22.2. If the City terminates this Contract in whole or in part, due to default or failure of Contractor to perform Work in accordance with the Contract, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Contractor shall be liable for all costs and damages incurred by the City as a result of the default by Contractor, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Contract. This Contract shall be in full force to the extent not terminated by written notice from the City to Contractor. In the event of a default, the City will provide Contractor with written notice of the default and a period of ten (10) days to cure the default. If Contractor notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time period, which agreed upon extension must be in writing and signed by the parties prior to the expiration of the cure period. Unless a written, signed extension has been fully executed by the parties, if Contractor fails to cure prior to expiration of the cure period, the Contract is automatically terminated.

22.3. If the City terminates this Contract for its own convenience not due to any default by Contractor, payment of Contractor shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Contractor against the City under this Contract.

22.4. Termination under any provision of this Section shall not affect any right, obligation, or liability of Contractor or the City that accrued prior to such termination. Contractor shall surrender to the City items of work or portions thereof, referred to in **Section 27**, for which Contractor has received payment or the City has made payment.

Section 23. Suspension of Work

The City may suspend, delay, or interrupt all or any part of the Work for such time as the City deems appropriate for its own convenience by giving written notice thereof to Contractor. An adjustment in the time of performance or method of compensation shall be negotiated as a result of such delay or suspension, unless the reason for the delay was within Contractor's control. The City shall not be responsible for Work performed by any subcontractors after notice of suspension is given by the City to Contractor.

Section 24. Contract Modification; Change Orders

Any modification of the provisions of this Contract shall not be enforceable or binding unless reduced to writing and signed by both the City and Contractor. A modification is a written document, contemporaneously executed by the City and Contractor, which increases or decreases the cost to the City over the agreed Contract Sum in **Section 5** of this Contract, or changes or modifies the Work described in the Contract Documents or the time for performance. In the event Contractor receives any communication of whatsoever nature from the City, which communication Contractor contends gives rise to any modification of this Contract, Contractor shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of a Change Order. Contractor's failure to submit such written request for modification in the form of a Change Order shall be the basis for refusal by the City to treat said communication as a basis for modification or to allow such modification. In connection with any modification to this Contract affecting any change in price, Contractor shall submit a complete breakdown of labor, material, equipment, and other costs. If Contractor incurs additional costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Change Order. To be enforceable, the Change Order must describe with particularity the nature of the change, any delay in time the Change Order will cause, or any increase or decrease in the Contract Sum. The Change Order must be signed and dated by both Contractor and the City before the Change Order may be implemented.

Section 25. Dispute Resolution

In the event of a dispute concerning performance of this Contract, the parties agree to meet to negotiate the problem. If such negotiation fails, the parties will mediate the dispute using a professional mediator, and the parties will split the cost. If the dispute cannot be resolved in either of the foregoing ways within thirty (30) days, either party may file suit in Clackamas County Circuit Court. In the alternative, at the City's election, the parties may follow the dispute resolution procedures found in the Special Provisions.

Section 26. Access to Records

The City shall have access, upon request, to such books, documents, receipts, papers, and records of Contractor as are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts during the term of this Contract and for a period of four (4) years after termination of the Contract, unless the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Contract.

Section 27. Property of the City

All documents, reports, and research gathered or prepared by Contractor under this Contract, including but not limited to spreadsheets, charts, graphs, drawings, tracings, maps, surveying records, mylars, modeling, data generation, papers, diaries, inspection reports, photographs, and any originals or certified copies of the original work forms, if any, shall be the exclusive property of the City and shall be delivered to the City prior to final payment. Any statutory or common law rights to such property held by Contractor as creator of such work shall be conveyed to the City upon request without additional compensation.

Section 28. Notices

Any notice required or permitted under this Contract shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of Wilsonville
 Attn: Dustin Schull, Parks Maintenance Supervisor
 29799 SW Town Center Loop East
 Wilsonville, OR 97070

To Contractor: Buell Recreation LLC
 Attn: Kati Radziwon
 7327 SW Barnes Road #601
 Portland, OR 97301

Section 29. Miscellaneous Provisions

29.1. Legal Effect and Assignment. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Contract may be enforced by an action at law or in equity.

29.2. No Assignment. Contractor may not assign this Contract, nor delegate the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

29.3. Governing Law. This Contract shall be construed in accordance with and governed by the laws of the State of Oregon, regardless of any conflicts of laws. All contractual provisions required by ORS Chapters 279A, 279B, 279C, and related Oregon Administrative Rules to be included in public agreements are hereby incorporated by reference and shall become a part of this Contract as if fully set forth herein.

29.4. Jurisdiction. Jurisdiction and venue for any dispute will be in Clackamas County Circuit Court.

29.5. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection

with any controversy arising out of this Contract or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Contract, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

29.6. Time of the Essence. Time is expressly made of the essence in the performance of this Contract.

29.7. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Contract, the first day from which the designated period of time begins to run shall not be included.

29.8. Number, Gender and Captions. In construing this Contract, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Contract.

29.9. Good Faith and Reasonableness. The parties intend that the obligations of good faith and fair dealing apply to this Contract generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Contract. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Contract gives the City “sole discretion” or the City is allowed to make a decision in its “sole judgment.”

29.10. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Contract in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

29.11. Interpretation. As a further condition of this Contract, the City and Contractor acknowledge that this Contract shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the contract, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

29.12. Defined Terms. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Contract Documents.

29.13. Entire Agreement. This Contract, all documents attached to this Contract, and all Contract Documents and laws and regulations incorporated by reference herein represent the entire agreement between the parties.

29.14. Counterparts. This Contract may be executed in one or more counterparts, each of which shall constitute an original Contract but all of which together shall constitute one and the same instrument.

29.15. Authority. Each party signing on behalf of Contractor and the City hereby warrants actual authority to bind their respective party.

The Contractor and the City hereby agree to all provisions of this Contract.

CONTRACTOR:

CITY:

BUELL RECREATION LLC

CITY OF WILSONVILLE

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

EIN/Tax I.D. No. _____

APPROVED AS TO FORM:

Amanda Guile-Hinman, City Attorney
City of Wilsonville, Oregon



Buell Recreation

7327 Barnes Road #601 | Portland, OR 97725 | 503-922-1650

Proposal 907-171726-4 | 10/11/2023

OUR MISSION IS TO BRING
PLAY THAT MOVES YOU.
 TO COMMUNITIES AROUND
 THE WORLD

BURKE BUILT QUALITY

Discover the value of investing in a Burke Playground:

KOREKONNECT® DIRECT-BOLT CLAMP SYSTEM:

Nucleus® features our Industry-leading KoreKconnect direct-bolt clamp system resulting in the strongest and most accurate connection system ever. Factory located connection points make for easy, precise installation and an error-free fit. Best of all, KoreKconnect is covered for 100 years under our non-prorated Generations Warranty®.

DIRECT-BOLT CONNECTION SYSTEM:

Intensity®, ELEVATE® Fitness Course, ACTIVATE® Fitness Circuit and Synergy® feature Burke's trusted direct-bolt connection that uses a durable, straightforward direct-bolt system to ensure a trouble-free installation and provide the necessary strength to accommodate the demands of playing children. Like our KoreKconnect system, Direct-Bolt connections are covered for 100 years under our Generations Warranty.

EZKONNECT® DECK MOUNTING SYSTEM:

Our exclusive self-leveling deck attachment and factory CNC construction allows for faster and more precise location of decks during installation. The 2-bolt per corner deck attachment increases overall structure strength and stability.

PLATFORMS:

Burke's oversized non-slip platforms are constructed of heavy-duty punched steel that can support more than 2 tons. Our vinyl coating is California compliant, free of lead and other hazardous heavy metals.

TAMPER-RESISTANT STAINLESS STEEL HARDWARE:

All hardware is covered for 100 years under our Generations Warranty.

PREMIUM POWDER COATINGS:

Our industry-leading powder coatings and finishes prevent fading, last longer and deter rust. We also offer a "coastal package" powder coat system. This special powder coat system for metal components and upright posts will provide additional corrosion and chemical protection along with added longevity to the color and gloss retention of the powder coated parts. Contact your Burke Representative for more information on colors, price and warranty.

COMPOUND PLASTICS WITH UV-20:

You'll get long wear and bright, vibrant colors that hold up for years thanks to our thick, durable rotomolded plastics with UV-20 protection. This is why we can cover them for 15 years under our non-prorated Generations Warranty.

CLIMBING CABLES:

Our climbing cables are flexible enough to provide movement, yet strong enough to last. Our ropes are made from 6 polyester cords with steel reinforcement wrapped around a synthetic fiber core. Each cord contains 8 galvanized steel strands tightly covered with polyester multi-fibers. Our RopeVenture® cables consist of 6 strands, each containing 24 stainless steel reinforcing strands within a nylon sleeve, wrapped around a solid nylon core.

ALUMINUM CONNECTORS:

Swivel connectors at the end of our ropes allow assembly at any angle with no unwanted twists in the net. The aluminum fittings used to secure the joints are swaged in place to prevent any movement between the rope and fittings that could cause wear.



FREE RESOURCES

NPPS SAFETY KIT

Burke truly gives you the most value for your money. As part of our Total Cost of Ownership Package, we offer value-added resources FREE with every playground structure purchase. The National Program for Playground Safety (NPPS) Playground Supervision Safety Kit helps supervisors and educators be prepared on the playground. Learn more at bciburke.com/safety.

CUSTOM MAINTENANCE KIT

To help maintain a safe, functioning playground we include a custom maintenance schedule, touch-up paint, graffiti remover and carrying case FREE with every playground structure purchase.

PLANNING & FUNDING TOOLS

We provide you with FREE tools to plan your playground from fundraising and design to installing a community build playground. At Burke, we understand the dedication and hard work it takes to raise the funds for playground equipment. That's why we created Funds for Fun, a direct donation fundraising program to help your organization raise the funds it needs for your new playground. We've also partnered with The School Funding Center to provide up-to-date grant information along with expert grant writing services. Learn more at bciburke.com/funding.




FREE WITH EVERY BURKE PLAY STRUCTURE PURCHASE




FREE FUNDRAISING TOOLS!

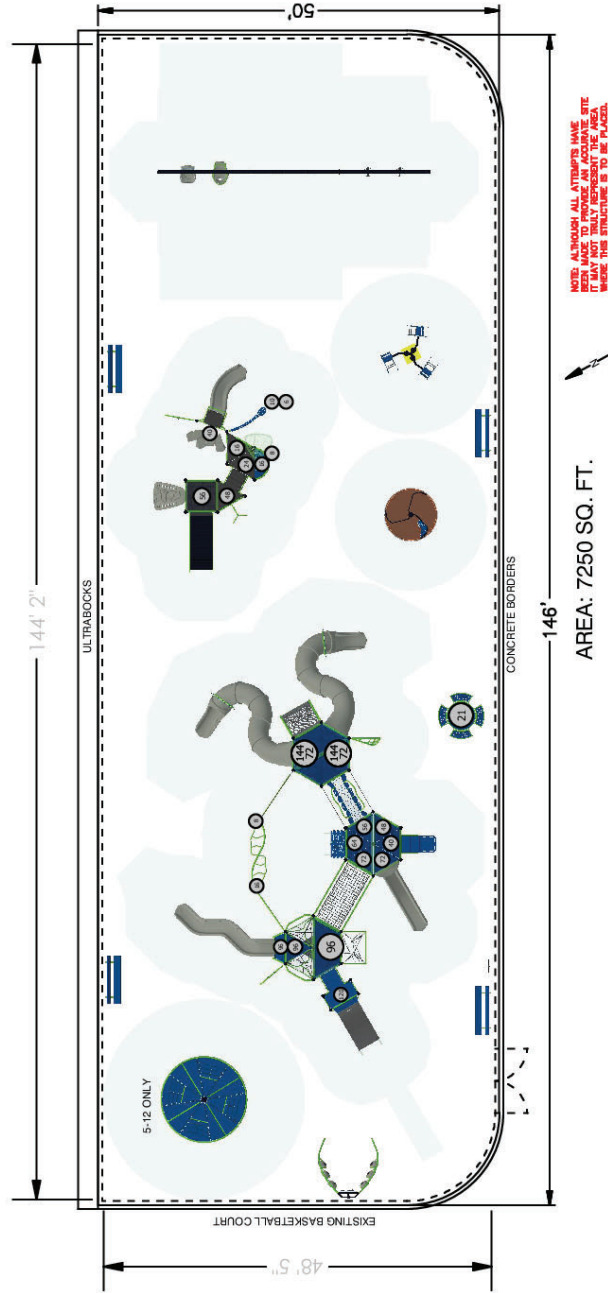
DESIGN SUMMARY

The following is a summary of some of the key elements of our Proposal:

- Project Name: Boones Ferry Park
- Project Number: 907-171726-4
- User Capacity: 235
- Age Groups: 5 to 12, 2 to 5, 2 to 12
- Dimensions: 144' 1"x47' 9"
- Designer Name: Pa Der Vang

Buell Recreation has developed a custom playground configuration based on the requirements as they have been presented for the Boones Ferry Park playground project. Our custom design will provide a safe and affordable playground environment that is aesthetically pleasing, full of fun for all users and uniquely satisfies your specific requirements. In addition, proposal # 907-171726-4 has been designed with a focus on safety, and is fully compliant with ASTM F1487 and CPSC playground safety standards.

OUR MISSION IS TO BRING
PLAY THAT MOVES YOU.
TO COMMUNITIES AROUND
THE WORLD



The use and layout of play components identified in this plan conform to the CPSC guidelines. U.S. CPSC recommends the separation of age groups in playground layouts.

TOTAL EVENTS	PLAYGROUND ACCESSIBILITY (Provided/Required)			TYPES OF GROUND EVENTS	
	ELEVATED EVENTS	TRANSFER ACCESSIBLE EVENTS	RAMP ACCESSIBLE EVENTS	GROUND EVENTS	GROUND EVENTS
41	20 / 10	9 / 5	0 / 5	24 / 7	11 / 4

OVERALL BOUNDING OF USE ZONES
 Area: 6964.2 sq.ft.
 Perimeter: 384.8 ft.
STRUCTURE SIZE: 48' 5" X 144' 2"
POST SIZE(S): 5"

**The space requirements shown here are to ASTM standards. Requirements for other standards may be different.

SERIES LINE: Burke Basics | Nucleus | Intensity

GROUP:
 5-12 Structure | 2-5 Structure | Freestanding | Momvnt

DESIGNED FOR AGES:
 5 to 12, 2 to 5, 2 to 12

Boones Ferry Park
 Wilsonville, OR, OR 97070

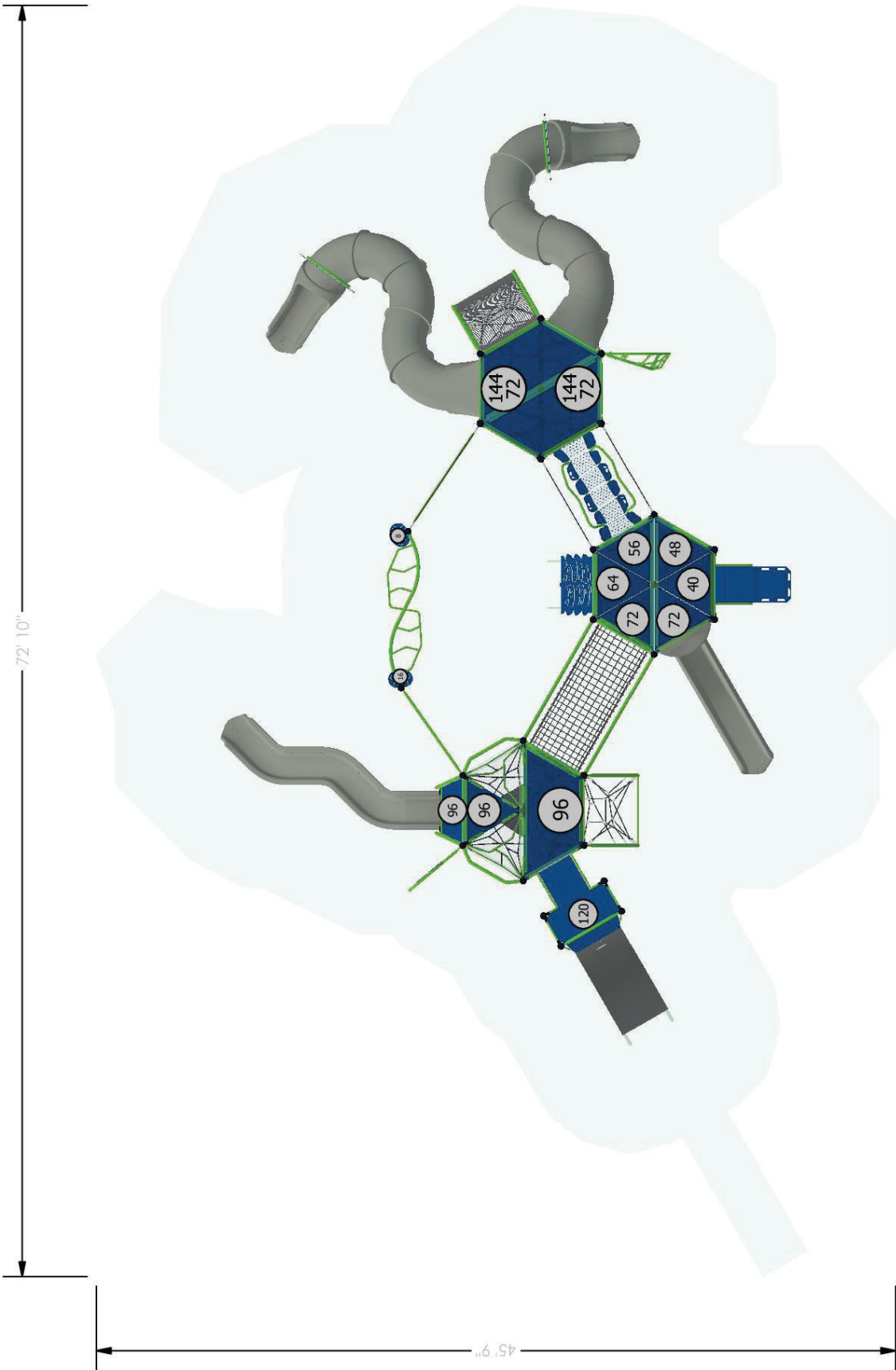


SITE PLAN VIEW

10/11/2023

Buell Recreation
907-171726-4

Designer: Pa Der Vang



The use and layout of play components identified in this plan conform to the CPSC guidelines. U.S. CPSC recommends the separation of age groups in playground layouts.

TOTAL EVENTS	PLAYGROUND ACCESSIBILITY (Provided/Required)				TYPES OF GROUND EVENTS
	ELEVATED EVENTS	TRANSFER ACCESSIBLE EVENTS	RAMP ACCESSIBLE EVENTS	GROUND EVENTS	
41	20 / 10	9 / 5	0 / 5	24 / 7	11 / 4

**The space requirements shown here are to ASTM standards. Requirements for other standards may be different.

OVERALL BOUNDING OF USE ZONES
 Area: 3329.3 sq.ft.
 Perimeter: 237 ft.
STRUCTURE SIZE: 45' 9" x 72' 10"
POST SIZE(S): 5"

SERIES LINE: Nucleus | Intensity

GROUP:
5-12 Structure

DESIGNED FOR AGES:
5 to 12

Boones Ferry Park
Wilsonville, OR, OR 97070

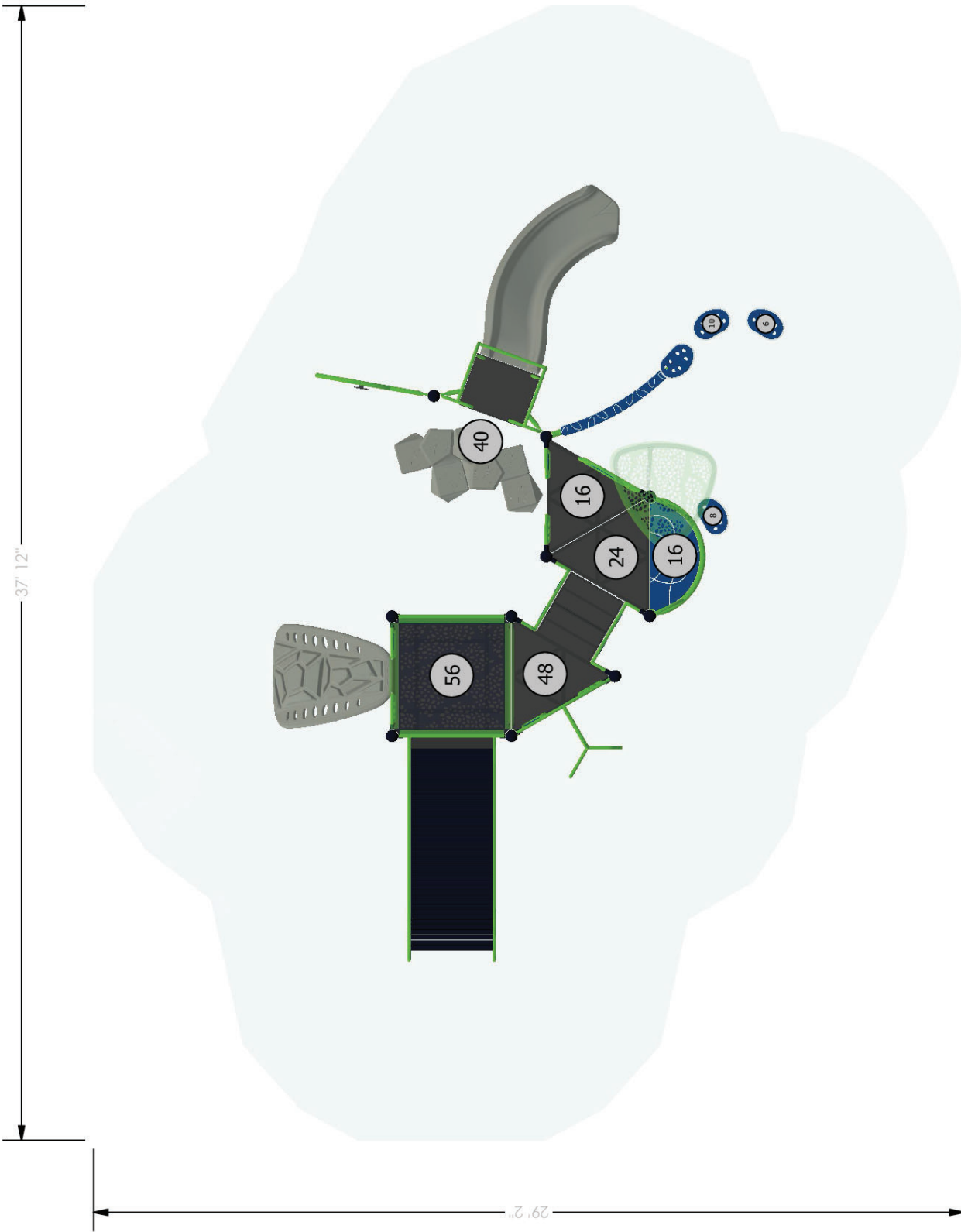


SITE PLAN VIEW

10/11/2023

Buell Recreation
907-171726-4

Designer: Pa Der Vang



The use and layout of play components identified in this plan conform to the CPSC guidelines. U.S. CPSC recommends the separation of age groups in playground layouts.

PLAYGROUND ACCESSIBILITY (Provided/Required)					
TOTAL EVENTS	ELEVATED EVENTS	TRANSFER ACCESSIBLE EVENTS	RAMP ACCESSIBLE EVENTS	GROUND EVENTS	TYPES OF GROUND EVENTS
41	20 / 10	9 / 5	0 / 5	24 / 7	11 / 4

OVERALL BOUNDING OF USE ZONES
 Area: 1106.9 sq.ft.
 Perimeter: 134.3 ft.
STRUCTURE SIZE: 29' 2" x 37' 12"
POST SIZE(S): 5"

**The space requirements shown here are to ASTM standards. Requirements for other standards may be different.

SERIES LINE: Nucleus | Intensity | Burke Basics

GROUP: 2-5 Structure

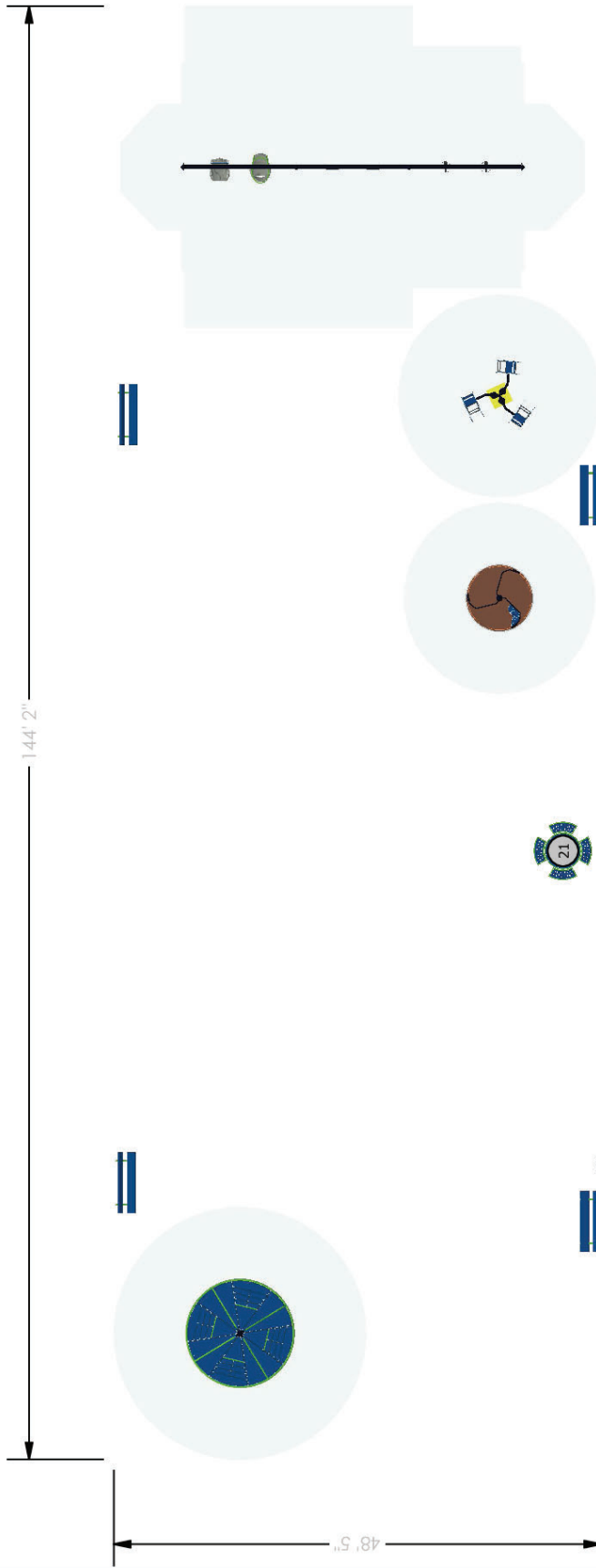
DESIGNED FOR AGES: 2 to 5

Boones Ferry Park
Wilsonville, OR, OR 97070

Burke
PLAY THAT MOVES YOU.

SITE PLAN VIEW
10/11/2023
Buell Recreation
907-171726-4
Designer: Pa Der Vang

Warning: Accessible surfacing material is required beneath and around this equipment that is compliant with ASTM, CPSC, and ADAAG requirements.



The use and layout of play components identified in this plan conform to the CPSC guidelines. U.S. CPSC recommends the separation of age groups in playground layouts.

TOTAL EVENTS	PLAYGROUND ACCESSIBILITY (Provided/Required)			TYPES OF GROUND EVENTS
	ELEVATED EVENTS	TRANSFER ACCESSIBLE EVENTS	RAMP ACCESSIBLE EVENTS	
41	20 / 10	9 / 5	0 / 5	11 / 4

**The space requirements shown here are to ASTM standards. Requirements for other standards may be different.

OVERALL BOUNDING OF USE ZONES
 Area: 6964.2 sq.ft.
 Perimeter: 384.8 ft.
STRUCTURE SIZE: 48' 5" X 144' 2"
POST SIZE(S): 5"

SERIES LINE: Burke Basics

GROUP:
Freestanding

DESIGNED FOR AGES:
2 to 12

Boones Ferry Park
Wilsonville, OR, OR 97070



SITE PLAN VIEW

10/11/2023

Buell Recreation
907-171726-4

Designer: Pa Der Vang



The use and layout of play components identified in this plan conform to the CPSC guidelines. U.S. CPSC recommends the separation of age groups in playground layouts.

TOTAL EVENTS	PLAYGROUND ACCESSIBILITY (Provided/Required)			TYPES OF GROUND EVENTS
	ELEVATED EVENTS	TRANSFER ACCESSIBLE EVENTS	RAMP ACCESSIBLE EVENTS	
41	20 / 10	9 / 5	0 / 5	11 / 4

**The space requirements shown here are to ASTM standards. Requirements for other standards may be different.

OVERALL BOUNDING OF USE ZONES
 Area: 58.3 sq. ft.
 Perimeter: 30.5 ft.
STRUCTURE SIZE: 7' 8" x 7' 8"
POST SIZE(S): 5"

SERIES LINE: Burke Basics

GROUP:
Momvnt

DESIGNED FOR AGES:
5 to 12

Boones Ferry Park
Wilsonville, OR, OR 97070



SITE PLAN VIEW

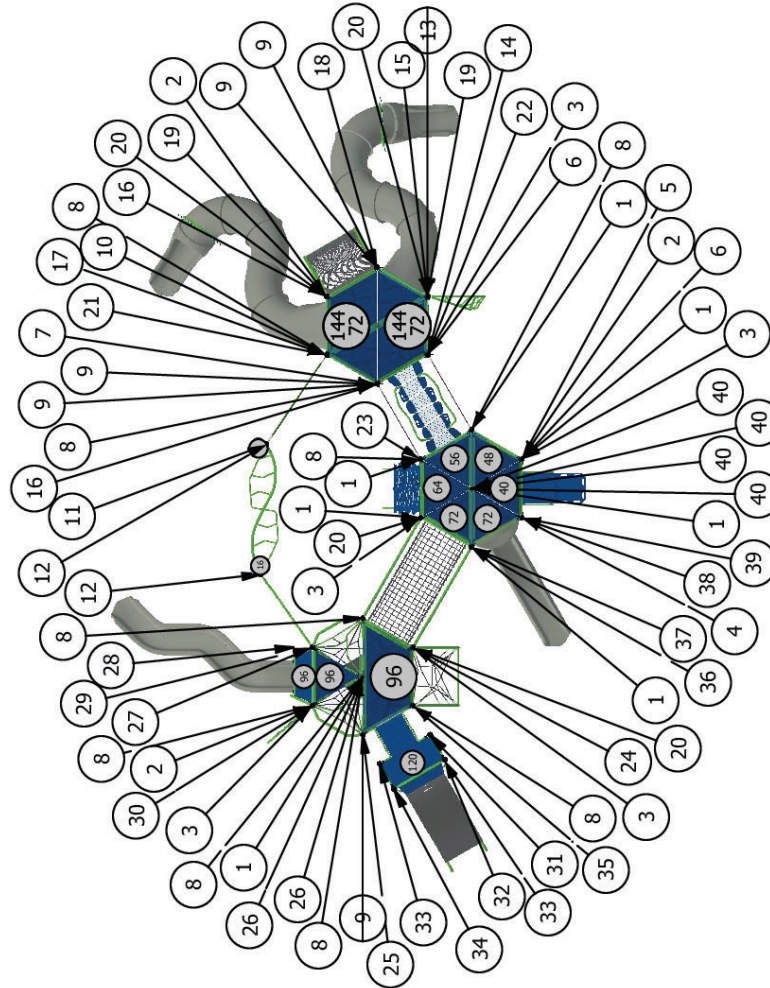
10/11/2023

Buell Recreation
907-171726-4

Designer: Pa Der Vang

Warning: Accessible safety surfacing material is required beneath and around this equipment that is compliant with ASTM, CPSC, and ADAAG requirements.

ITEM	COMP.	DESCRIPTION
1	270-0129	TRIANGLE PLATFORM
2	470-0813	EVOLUTION HEX ROOF
3	470-0808	EVOLUTION ROOF BOTTOM EDGE
4	370-1658	TRANSFER STATION, HANDRAIL 40"
5	370-1664	SHASTA CLIMBER, 40"-48"
6	270-0122	EVOLUTION OFFSET ENCLOSURE
7	370-1715	MESA CLIMBER
8	270-0120	EVOLUTION UNITARY ENCLOSURE
9	270-0132	HALF HEXAGON PLATFORM
10	370-1651	TRANGO CLIMBER, POST TO POST
11	370-1683	S HORIZONTAL LADDER, NUCLEUS
12	370-1608	OVSTEP LAUNCH PAD
13	570-0717	RAINDROPS ACTIVITY PANEL
14	370-1695	VIA CLIMBER 64"-72"
15	570-2629	FULL COLOR CUSTOM CURVED 41' CIRCLE
16	570-1545	EVOLUTION 6' OPENING BARRIER
17	370-0865	TREE BRANCH CLIMBER 72"
18	370-1649	EVOLUTION, DECK TO ROOF CLIMBER
19	470-0117	COBRA SLIDE CURVED 144"
20	570-1544	EVOLUTION SHORT CURVED TOP BARRIER
21	570-1557	EVOLUTION TALL CURVED TOP BARRIER, LEFT
22	570-1558	EVOLUTION TALL CURVED TOP BARRIER, RIGHT
23	370-0804	JUNGLE VINE CLIMBER 64"
24	370-1663	ROPEVENTURE TUNNEL
25	370-1705	NUCLEUS CORE CLIMBER, 8"
26	370-1703	NUCLEUS CORE CROSS SUPPORT
27	470-0876	CORE SLIDE ARCH, VIPER
28	470-0827	VIPER S R 96 W/O HOOD
29	370-0204	LINX LEVITATE CLIMBER
30	570-0860	3-IN-A-ROW RING PANEL
31	370-0039	EVOLUTION 24" TRANSITION STAIR W/ BARRIERS
32	270-0290	HALF PLATFORM
33	570-2624	HALF PIPE WALL
34	370-0224	VICTORY CLIMBER
35	370-1702	NUCLEUS CORE ARCH CLIMBER
36	470-0754	VELO SLIDE 64"-72", W/O HOOD
37	470-0967	SLIDE HOOD, LOW SIDE WALL
38	570-2634	CUSTOM CURVED 41.2 SIDED
39	270-0295	32" ABSTRACT PLATFORM OFFSET BARRIER
40	270-0009	8" CLOSURE PLATE, ELLIPSE



SERIES LINE: Nucleus | Intensity

GROUP:
5-12 Structure

DESIGNED FOR AGES:
5 to 12

Boones Ferry Park
Wilsonville, OR, OR 97070



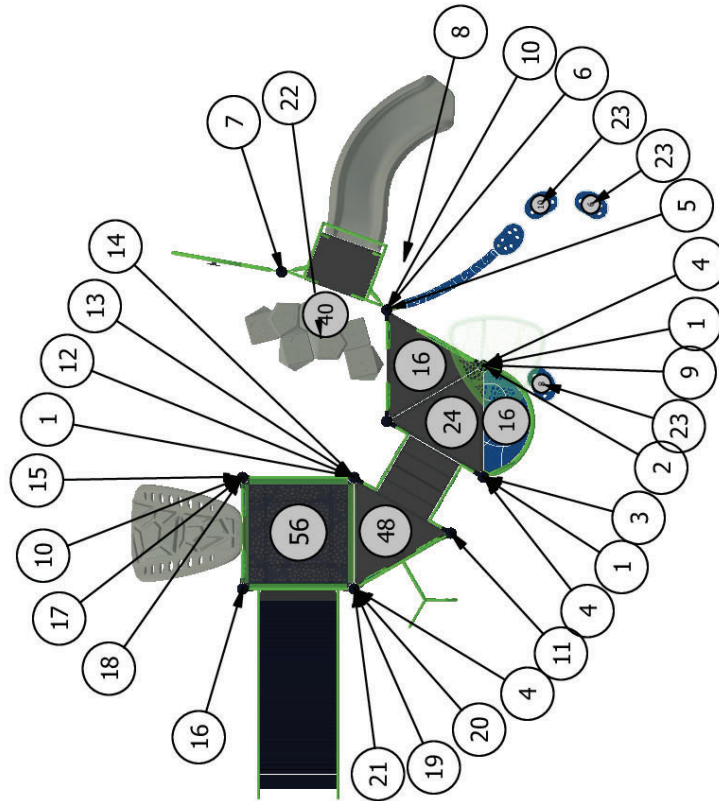
COMPONENT VIEW

10/11/2023

Buell Recreation
907-171726-4

Designer: Pa Der Vang

ITEM	COMP.	DESCRIPTION
1	270-0129	TRIANGLE PLATFORM
2	470-0764	SOLIS POST TOPPER
3	470-0075	CRESCENT PLATFORM
4	270-0009	8" CLOSURE PLATE, ELLIPSE
5	370-1720	LIL NOVO BALANCE BEAM LINK
6	270-0287	SLIDE PLATFORM
7	570-2703	COLLISION RING PANEL
8	470-0802	MONACO SLIDE, 32"-40"
9	270-0122	EVOLUTION OFFSET ENCLOSURE
10	270-0120	EVOLUTION UNITARY ENCLOSURE
11	370-0039	EVOLUTION 24" TRANSITION STAIR W/ BARRIERS
12	270-0130	SQUARE PLATFORM
13	570-0695	CUSTOM PANEL 49 BELOW PLATFORM
14	570-1703	CUSTOM PANEL 41 2 SIDED
15	370-1646	MANITOU CLIMBER 56"
16	470-0756	ROLLER SLIDE 48"-56"
17	470-0867	EVOLUTION SQUARE ROOF
18	470-0808	EVOLUTION ROOF BOTTOM EDGE
19	470-0809	SQUARE ROOF TOP EDGE, ONE SIDE
20	370-1712	ATOM CLIMBER 32"-48"
21	270-0121	EVOLUTION STANCHION
22	560-2709	EKO BUNDLE
23	580-1364	LIL NOVO BEAN STEP



SERIES LINE: Nucleus | Intensity | Burke Basics

COMPONENT VIEW

GROUP:
2-5 Structure

Boones Ferry Park
Wilsonville, OR, OR 97070

10/11/2023

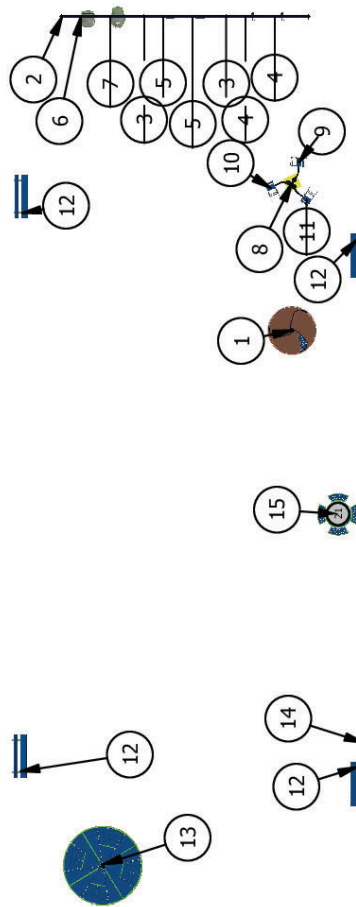
DESIGNED FOR AGES:
2 to 5



Buell Recreation
907-171726-4

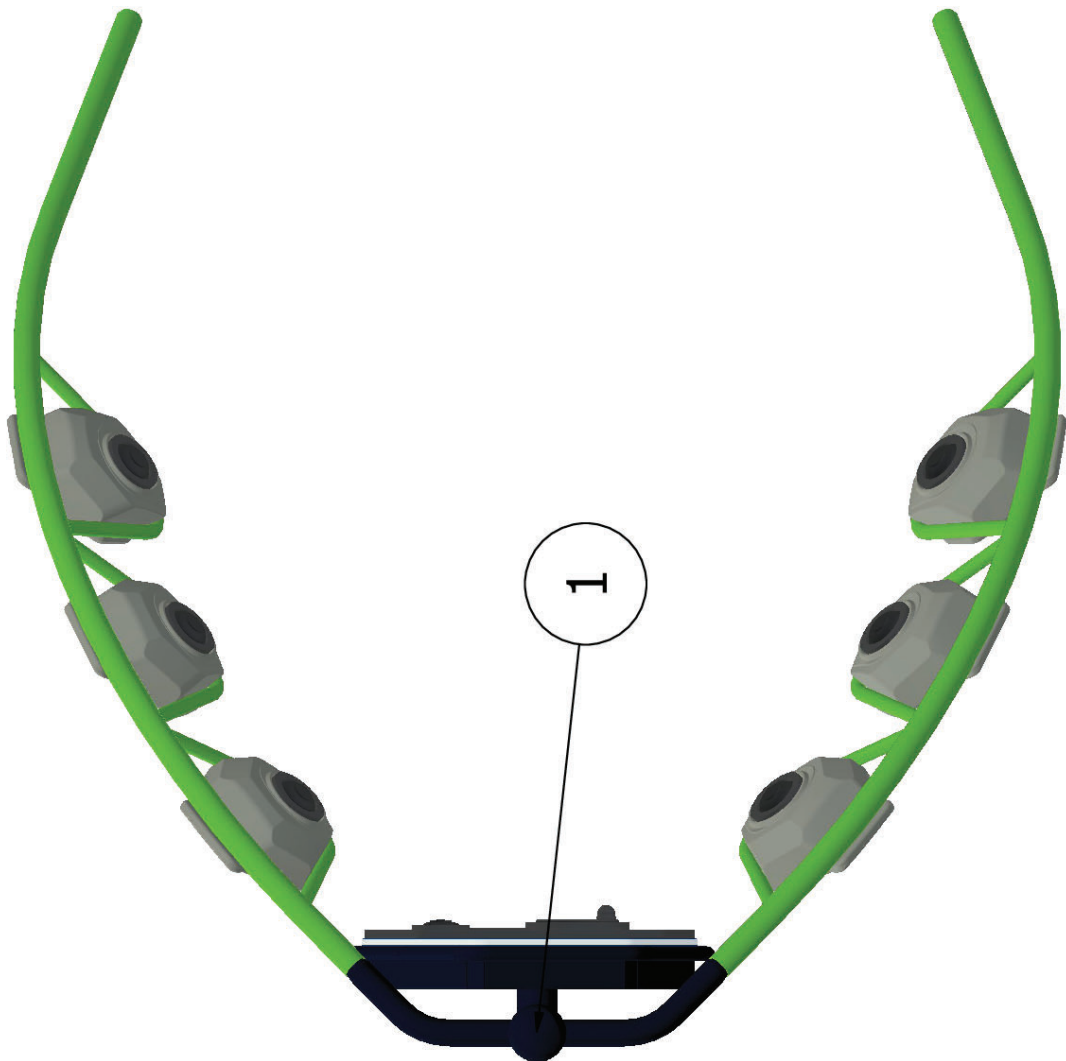
Designer: Pa Der Vang

ITEM	COMP.	DESCRIPTION
1	560-0051	INCLUSIVE ORBIT
2	550-0201	SINGLE POST SWING ASSEMBLY 5" OD
3	550-0202	SINGLE POST SWING ADD-ON 5" OD
4	550-0099	TOT SEAT, 7' & 8' SINGLE, STD CHAIN
5	550-0111	BELT SEAT, 8' SINGLE, STD CHAIN
6	550-0171	FREEDOM SWING SEAT, 8' BEAM, STD CHAIN
7	550-0191	KONNECTION SWING
8	570-0771	TRI-RIDER
9	570-0826	WASP FOR TRI-RIDER
10	570-0827	SNAIL FOR TRI-RIDER
11	570-0828	LADYBUG FOR TRI-RIDER
12	580-0172	6' PVC TRADITIONAL BENCH W/BACK, STATIONARY
13	560-0576	REV8
14	580-1311	FS DOUBLE SIGN CUSTOM
15	580-1341	NOVO PICNIC TABLE



SERIES LINE: Burke Basics		COMPONENT VIEW	
GROUP: Freestanding	Boones Ferry Park Wilsonville, OR, OR 97070		10/11/2023
DESIGNED FOR AGES: 2 to 12	Burke PLAY THAT MOVES YOU		Buell Recreation 907-171726-4 Designer: Pa Der Vang
BCI BURKE COMPANY, LLC PO BOX 549 FOND DU LAC, WI 54936-0549 920.921.9220 BCIBURKE.COM			

ITEM	COMP.	DESCRIPTION
1	560-2625	MOVMT INCLUSIVE, FREESTANDING



SERIES LINE: Burke Basics

COMPONENT VIEW

GROUP:
Mmvmnt

Boones Ferry Park
Wilsonville, OR, OR 97070

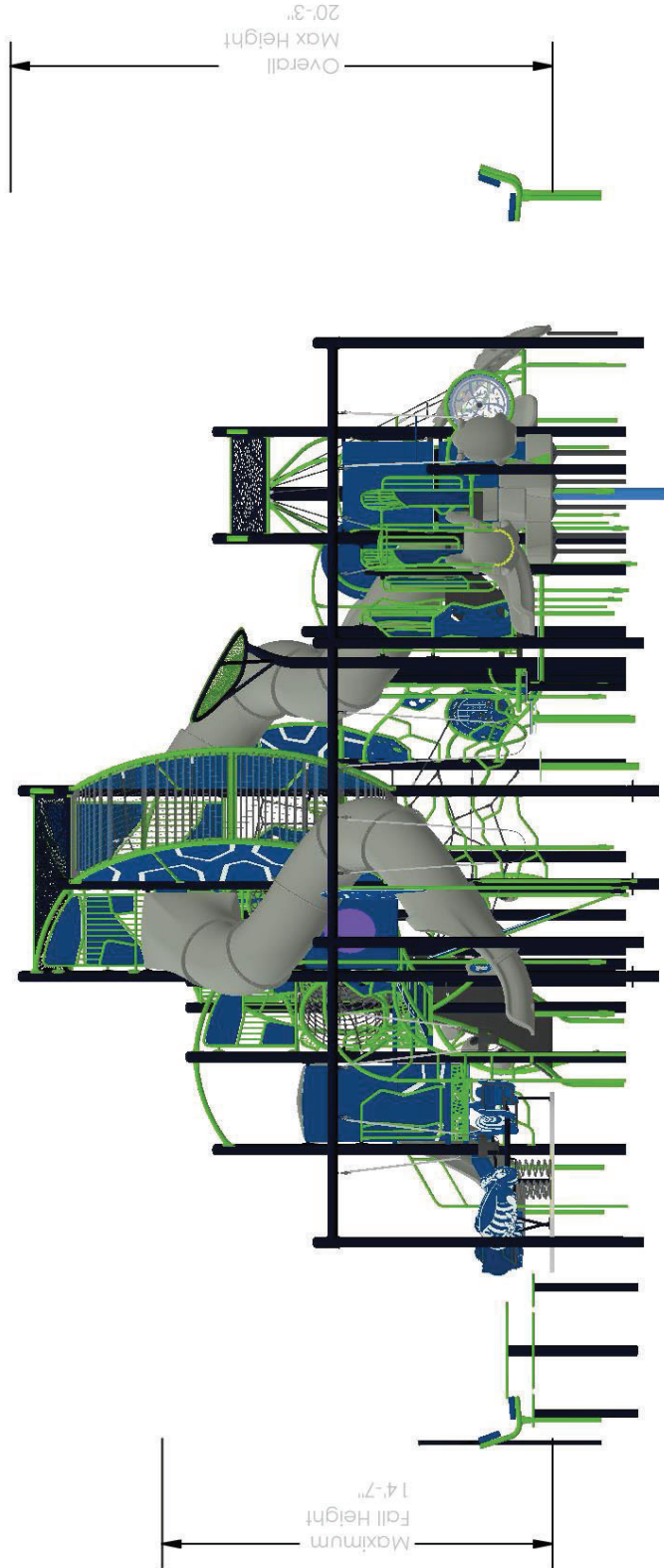
10/11/2023

DESIGNED FOR AGES:
5 to 12

Burke
PLAY THAT MOVES YOU

Buell Recreation
907-171726-4

Designer: Pa Der Vang



SERIES LINE: Burke Basics | Nucleus | Intensity

ELEVATION VIEW

GROUP:
5-12 Structure | 2-5
Structure | Freestanding | Momvnt

Boones Ferry Park
Wilsonville, OR, OR 97070

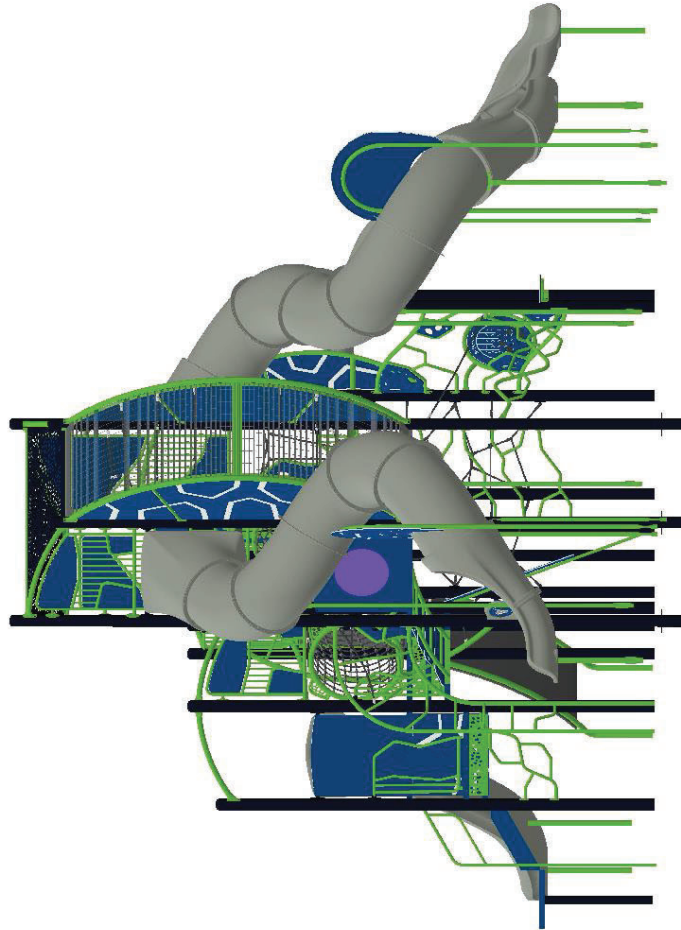
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Buell Recreation
907-171726-4

DESIGNED FOR AGES:
5 to 12, 2 to 5, 2 to 12



Designer: Pa Der Vang



SERIES LINE: Nucleus | Intensity

GROUP:
5-12 Structure

DESIGNED FOR AGES:
5 to 12

Boones Ferry Park
Wilsonville, OR, OR 97070

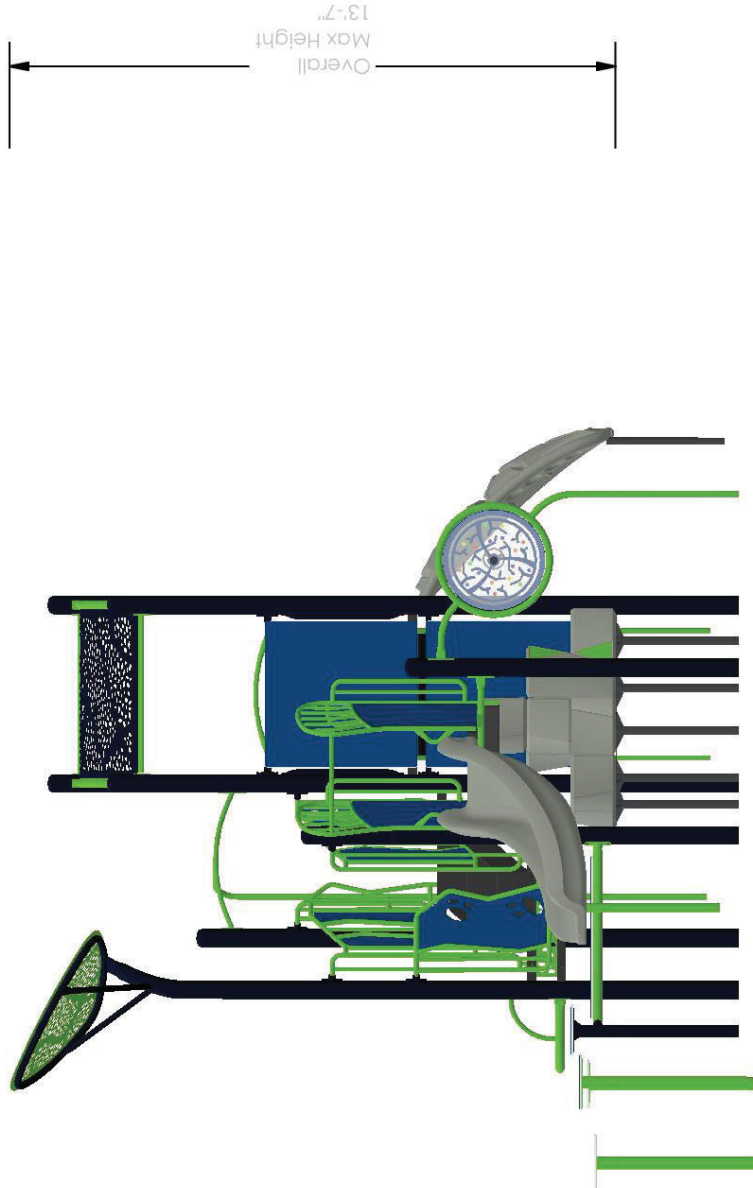


ELEVATION VIEW

10/11/2023

Buell Recreation
907-171726-4

Designer: Pa Der Vang



SERIES LINE: Nucleus | Intensity | Burke Basics

ELEVATION VIEW

GROUP:
2-5 Structure

Boones Ferry Park
Wilsonville, OR, OR 97070

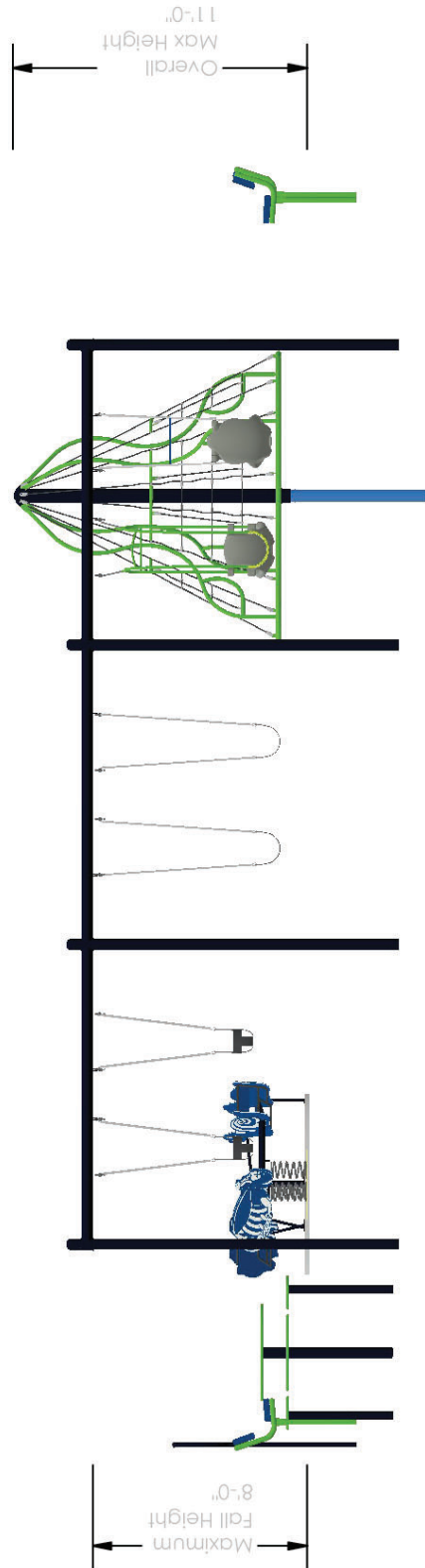
10/11/2023

DESIGNED FOR AGES:
2 to 5

Buell Recreation
907-171726-4

Designer: Pa Der Vang





SERIES LINE: Burke Basics **ELEVATION VIEW**

GROUP:
Freestanding

DESIGNED FOR AGES:
2 to 12

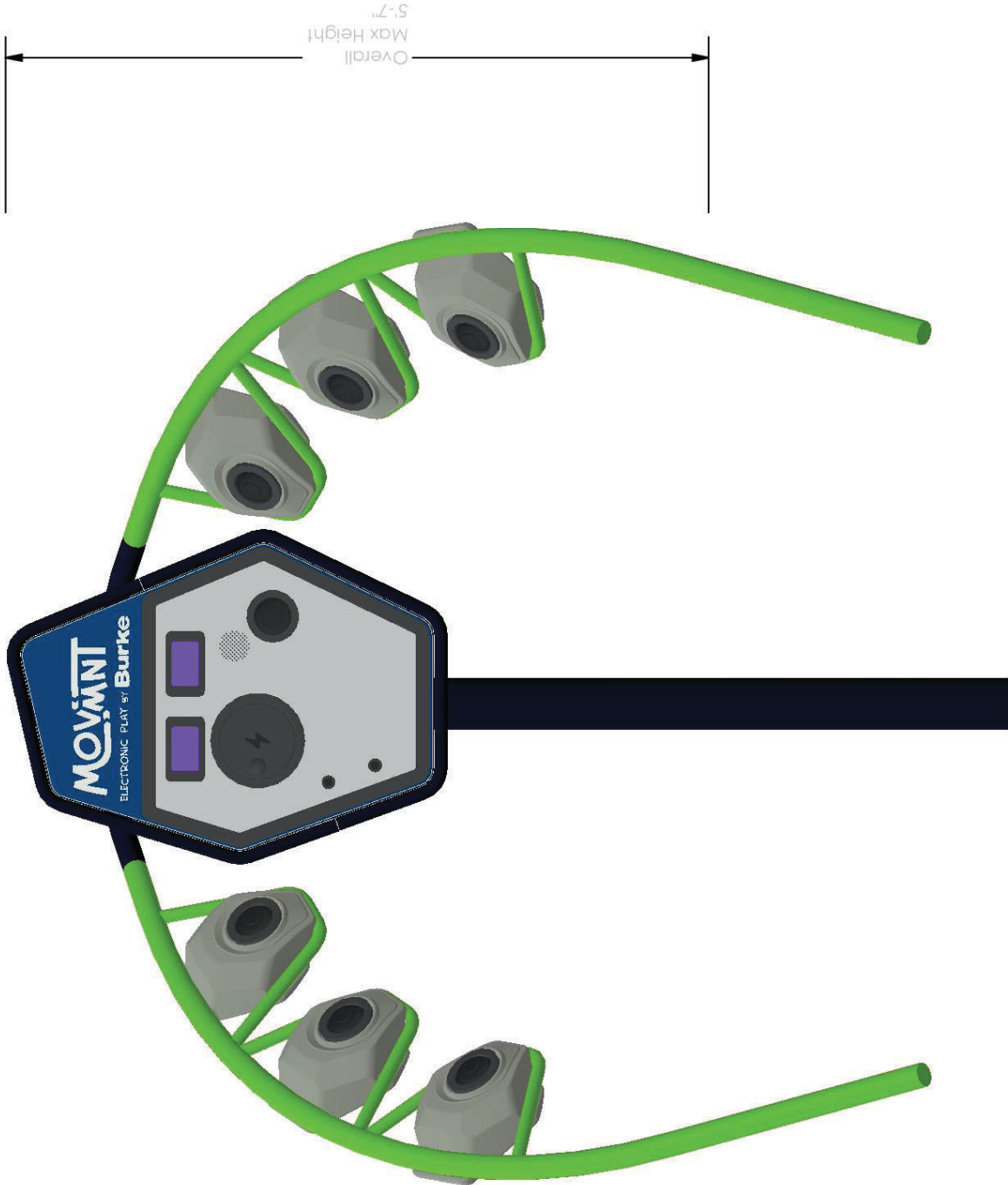
Boones Ferry Park
Wilsonville, OR, OR 97070



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907-171726-4

Designer: Pa Der Vang



SERIES LINE: Burke Basics

ELEVATION VIEW

GROUP:
Momvnt

Boones Ferry Park
Wilsonville, OR, OR 97070

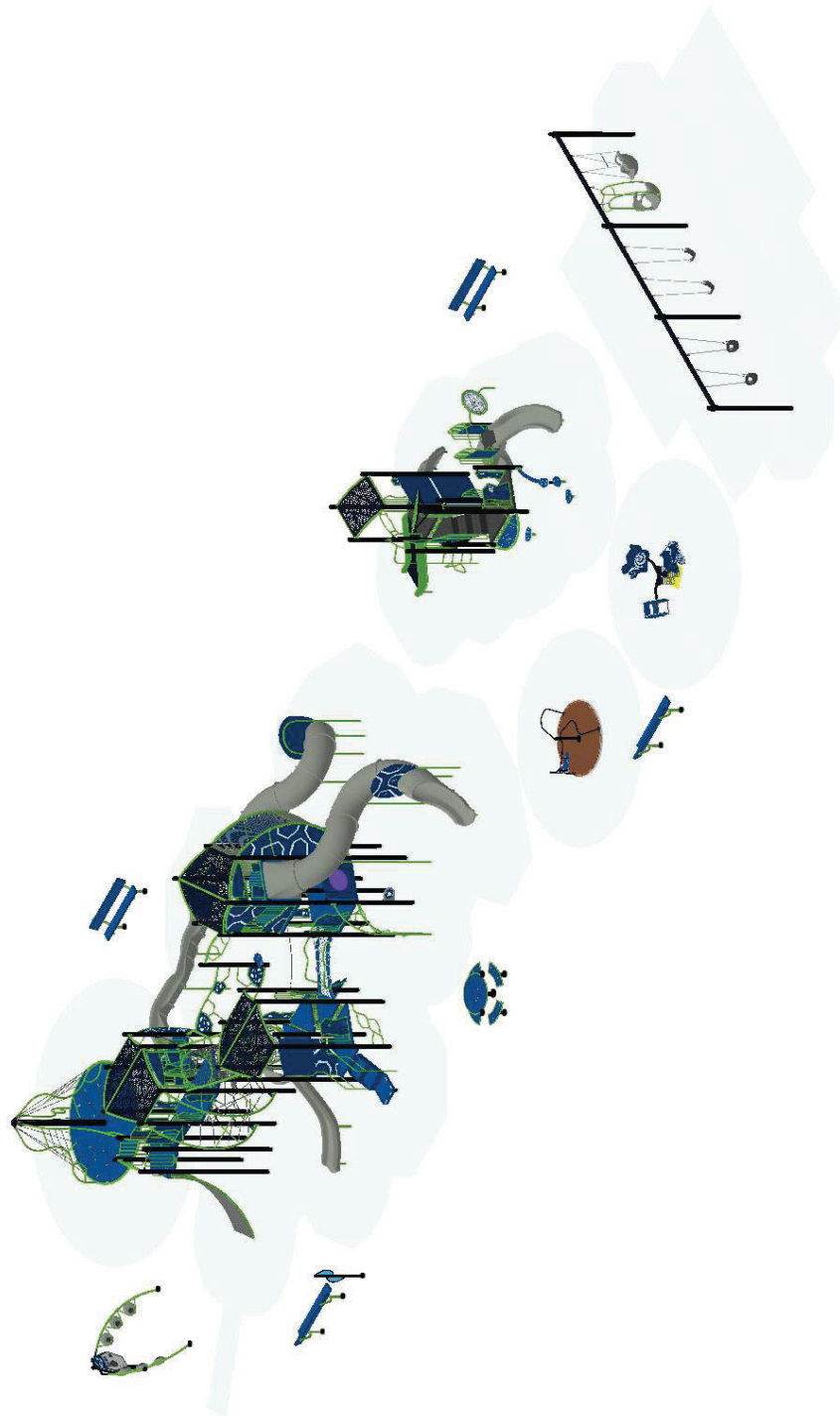
10/11/2023

DESIGNED FOR AGES:
5 to 12

Burke
PLAY THAT MOVES YOU

Buell Recreation
907-171726-4

Designer: Pa Der Vang



SERIES LINE: Burke Basics | Nucleus | Intensity

ISOMETRIC VIEW

GROUP:
5-12 Structure | 2-5
Structure | Freestanding | Momvnt

Boones Ferry Park
Wilsonville, OR, OR 97070

10/11/2023

DESIGNED FOR AGES:
5 to 12, 2 to 5, 2 to 12

Burke
PLAY THAT MOVES YOU

Buell Recreation
907-171726-4

Designer: Pa Der Vang



SERIES LINE: Nucleus | Intensity

GROUP:
5-12 Structure

DESIGNED FOR AGES:
5 to 12

Boones Ferry Park
Wilsonville, OR, OR 97070

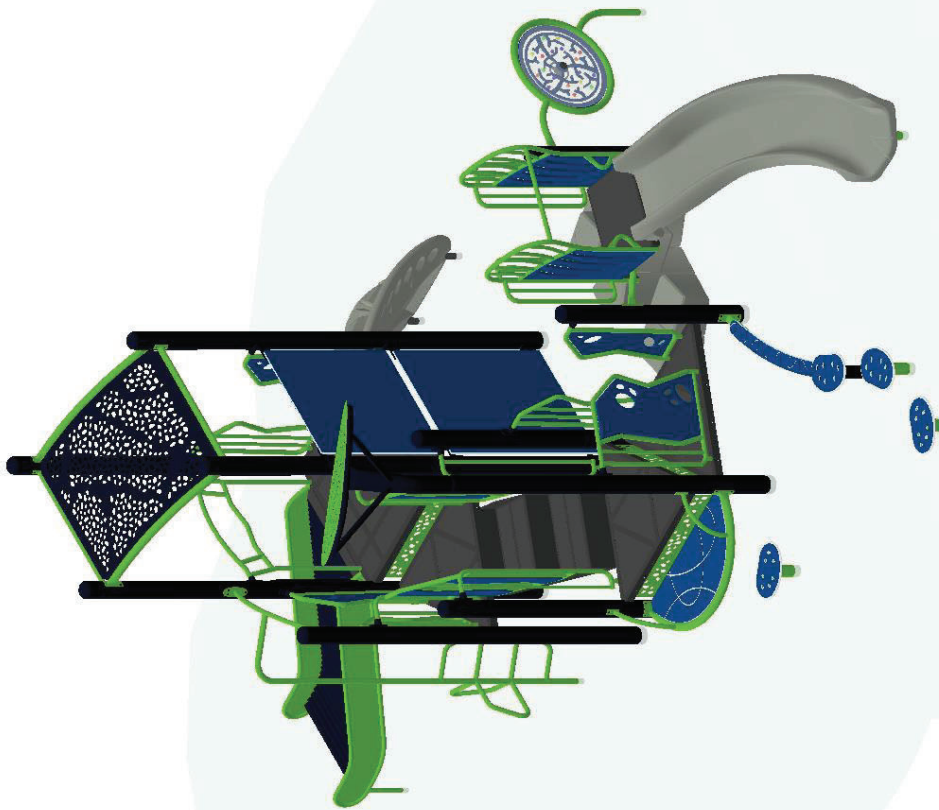
Burke
PLAY THAT MOVES YOU

ISOMETRIC VIEW

10/11/2023

Buell Recreation
907-171726-4

Designer: Pa Der Vang



SERIES LINE: Nucleus | Intensity | Burke Basics

ISOMETRIC VIEW

GROUP:
2-5 Structure

Boones Ferry Park
Wilsonville, OR, OR 97070

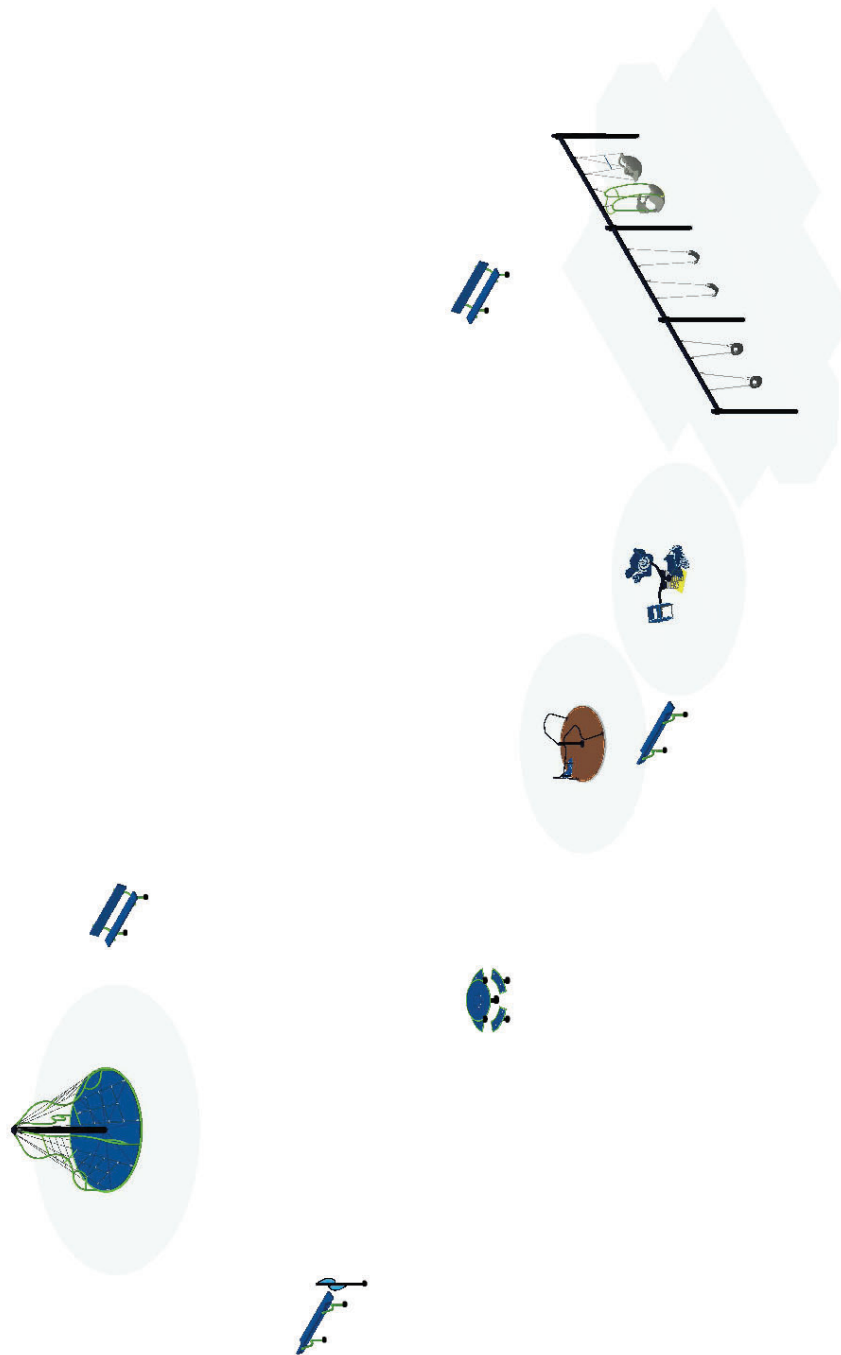
10/11/2023

DESIGNED FOR AGES:
2 to 5

Burke
PLAY THAT MOVES YOU

Buell Recreation
907-171726-4

Designer: Pa Der Vang



SERIES LINE: Burke Basics

ISOMETRIC VIEW

GROUP:
Freestanding

Boones Ferry Park
Wilsonville, OR, OR 97070

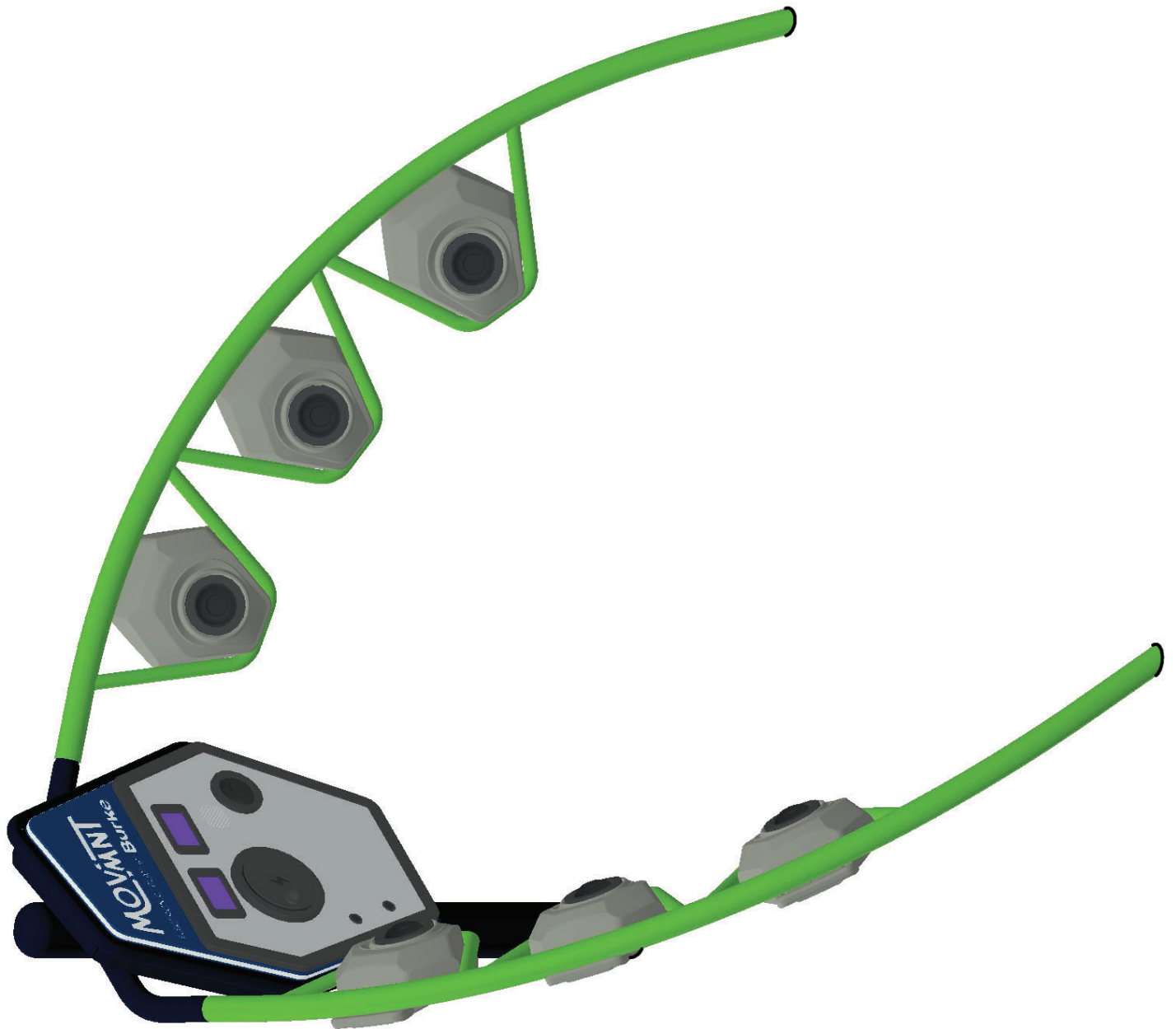
10/11/2023

DESIGNED FOR AGES:
2 to 12

Burke
PLAY THAT MOVES YOU

Buell Recreation
907-171726-4

Designer: Pa Der Vang



SERIES LINE: Burke Basics

ISOMETRIC VIEW

GROUP:
Momvnt

Boones Ferry Park
Wilsonville, OR, OR 97070

10/11/2023

DESIGNED FOR AGES:
5 to 12

Burke
PLAY THAT MOVES YOU

Buell Recreation
907-171726-4

Designer: Pa Der Vang

The play components identified in this proposal are IPEMA certified. The use and layout of these components conform to the requirements of ASTM F1487. To verify product certification, visit www.ipema.org.



The space requirements shown in this proposal are to ASTM standards. Requirements for other standards may be different.

Component No.	Description	Qty	User Cap	Ext. User Cap	Weight	Ext. Weight
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5-12 Structure

Nucleus

072-0500-120C	5" OD X 120" CAPPED POST	2	0	0	63	126
072-0500-148C	5" OD X 148" CAPPED POST	1	0	0	78	78
072-0500-172C	5" OD X 172" CAPPED POST	1	0	0	90	90
072-0500-184C	5" OD X 184" CAPPED POST	4	0	0	96	384
072-0500-196C	5" OD X 196" CAPPED POST	6	0	0	103	618
072-0500-208C	5" OD X 208" CAPPED POST	4	0	0	109	436
072-0500-220C	5" OD X 220" CAPPED POST	2	0	0	115	230
072-0502-172S	5" OD X 172" SWAGED POST	5	0	0	90	450
072-0502-208S	5" OD X 208" SWAGED POST	2	0	0	109	218
072-0504-10B	5" OD X 10" STUBBY POST	1	0	0	6	6
072-5503-104T	5" OD X 104" TOP ALUMINUM CAP...	1	0	0	20	20
072-5503-52T	5" OD X 52" TOP ALUMINUM CAPP...	1	0	0	11	11
072-5503-68T	5" OD X 68" TOP ALUMINUM CAPP...	1	0	0	14	14
072-5503-88T	5" OD X 88" TOP ALUMINUM CAPP...	3	0	0	18	54
270-0009	8" CLOSURE PLATE, ELLIPSE	4	0	0	8	32
270-0120	EVOLUTION UNITARY ENCLOSURE	9	0	0	34	306
270-0122	EVOLUTION OFFSET ENCLOSURE	2	0	0	34	68
270-0129	TRIANGLE PLATFORM	7	2	14	48	336
270-0132	HALF HEXAGON PLATFORM	5	6	30	144	720
270-0290	HALF PLATFORM	1	3	3	57	57
270-0295	32" ABSTRACT PLATFORM OFFSET ...	1	0	0	35	35
370-0039	EVOLUTION 24" TRANSITION STAI...	1	4	4	181	181
370-0204	LINX LEVITATE CLIMBER	1	6	6	223	223
370-0224	VICTORY CLIMBER	1	1	1	328	328
370-0804	JUNGLE VINE CLIMBER 64"	1	2	2	111	111
370-0865	TREE BRANCH CLIMBER 72"	1	4	4	33	33
370-1649	EVOLUTION, DECK TO ROOF CLIMBER	1	7	7	472	472
370-1651	TRANGO CLIMBER, POST TO POST	1	5	5	32	32
370-1658	TRANSFER STATION, HANDRAIL 40"	1	5	5	172	172
370-1663	ROPEVENTURE TUNNEL	1	0	0	311.4	311.4
370-1664	SHASTA CLIMBER, 40"-48"	1	2	2	20	20
370-1695	VIA CLIMBER 64"-72"	1	3	3	75	75
370-1702	NUCLEUS CORE ARCH CLIMBER	1	7	7	265	265
370-1703	NUCLEUS CORE CROSS SUPPORT	2	0	0	32	64
370-1705	NUCLEUS CORE CLIMBER, 8'	1	12	12	161	161
370-1715	MESA CLIMBER	1	4	4	143	143
470-0117	COBRA SLIDE CURVED 144"	2	3	6	463	926
470-0754	VELO SLIDE 64"-72", W/O HOOD	1	2	2	111	111
470-0808	EVOLUTION ROOF BOTTOM EDGE	5	0	0	13	65
470-0813	EVOLUTION HEX ROOF	3	0	0	211	633

470-0827	VIPER S R 96 W/O HOOD	1	4	4	216	216
470-0876	CORE SLIDE ARCH, VIPER	1	0	0	174	174
470-0967	SLIDE HOOD, LOW SIDE WALL	1	0	0	37	37
570-0717	RAINDROPS ACTIVITY PANEL	1	2	2	8	8
570-1544	EVOLUTION SHORT CURVED TOP BA...	4	0	0	50	200
570-1545	EVOLUTION 6' OPENING BARRIER	2	0	0	78	156
570-1557	EVOLUTION TALL CURVED TOP BAR...	1	0	0	114	114
570-1558	EVOLUTION TALL CURVED TOP BAR...	1	0	0	114	114
570-2624	HALF PIPE WALL	2	0	0	20	40
570-2629	FULL COLOR CUSTOM CURVED 41 C...	1	0	0	46.87	46.87
570-2634	CUSTOM CURVED 41 2 SIDED	1	1	1	48	48
600-0104	NPPS SUPERVISION SAFETY KIT	1	0	0	3	3
660-0103	MAINTENANCE KIT, STRUCTURE	1	0	0	7	7
660-0104	INSTALLATION KIT, STRUCTURE	1	0	0	5	5
670-0423	POST, FOOTER EXTENSION 5" OD ...	6	0	0	11	66

5-12 Structure

Intensity

370-1608	OVISTEP LAUNCH PAD	2	1	2	10	20
370-1683	S HORIZONTAL LADDER, NUCLEUS	1	6	6	56	56
570-0860	3-IN-A-ROW RING PANEL	1	4	4	54	54

Freestanding

Burke Basics

550-0099	TOT SEAT, 7' & 8' SINGLE, STD...	2	1	2	12	24
550-0111	BELT SEAT, 8' SINGLE, STD CHAIN	2	1	2	10	20
550-0171	FREEDOM SWING SEAT, 8' BEAM, ...	1	1	1	38	38
550-0191	KONNECTION SWING	1	2	2	64	64
550-0201	SINGLE POST SWING ASSEMBLY 5" OD	1	0	0	220	220
550-0202	SINGLE POST SWING ADD-ON 5" OD	2	0	0	145	290
560-0051	INCLUSIVE ORBIT	1	6	6	667	667
560-0576	REV8	1	25	25	1343	1343
570-0771	TRI-RIDER	1	3	3	179	179
570-0826	WASP FOR TRI-RIDER	1	1	1	42	42
570-0827	SNAIL FOR TRI-RIDER	1	1	1	45	45
570-0828	LADYBUG FOR TRI-RIDER	1	1	1	47	47
580-0172	6' PVC TRADITIONAL BENCH W/BA...	4	0	0	119	476
580-1311	FS DOUBLE SIGN CUSTOM	1	0	0	27	27
580-1341	NOVO PICNIC TABLE	1	9	9	279	279
660-0101	INSTALL KIT, BURKE BASICS - P...	1	0	0	2	2

Momvnt

Burke Basics

560-2625	MOVMT INCLUSIVE, FREESTANDING	1	2	2	328	328
660-0101	INSTALL KIT, BURKE BASICS - P...	1	0	0	2	2

2-5 Structure**Nucleus**

072-0500-116C	5" OD X 116" CAPPED POST	2	0	0	61	122
072-0500-144C	5" OD X 144" CAPPED POST	1	0	0	76	76
072-0500-168C	5" OD X 168" CAPPED POST	2	0	0	88	176
072-0500-184C	5" OD X 184" CAPPED POST	2	0	0	96	192
072-0500-88C	5" OD X 88" CAPPED POST	1	0	0	46	46
072-0500-92C	5" OD X 92" CAPPED POST	1	0	0	48	48
072-0502-144S	5" OD X 144" SWAGED POST	1	0	0	76	76
270-0009	8" CLOSURE PLATE, ELLIPSE	3	0	0	8	24
270-0120	EVOLUTION UNITARY ENCLOSURE	2	0	0	34	68
270-0121	EVOLUTION STANCHION	1	0	0	43	43
270-0122	EVOLUTION OFFSET ENCLOSURE	1	0	0	34	34
270-0129	TRIANGLE PLATFORM	3	2	6	48	144
270-0130	SQUARE PLATFORM	1	6	6	106	106
370-0039	EVOLUTION 24" TRANSITION STAI...	1	4	4	181	181
370-1646	MANITOU CLIMBER 56"	1	4	4	87	87
370-1712	ATOM CLIMBER 32"-48"	1	2	2	35	35
370-1720	LIL NOVO BALANCE BEAM LINK	1	3	3	58	58
470-0075	CRESCENT PLATFORM	1	1	1	52	52
470-0756	ROLLER SLIDE 48"-56"	1	3	3	721	721
470-0764	SOLIS POST TOPPER	1	0	0	87	87
470-0802	MONACO SLIDE, 32"-40"	1	2	2	70.6	70.6
470-0808	EVOLUTION ROOF BOTTOM EDGE	1	0	0	13	13
470-0809	SQUARE ROOF TOP EDGE, ONE SIDE	1	0	0	13	13
470-0867	EVOLUTION SQUARE ROOF	1	0	0	76	76
570-0695	CUSTOM PANEL 49 BELOW PLATFORM	1	1	1	66	66
570-1703	CUSTOM PANEL 41 2 SIDED	1	1	1	50	50

2-5 Structure**Intensity**

270-0287	SLIDE PLATFORM	1	1	1	152	152
570-2703	COLLISION RING PANEL	1	1	1	48	48

2-5 Structure**Burke Basics**

560-2709	EKO BUNDLE	1	6	6	148	148
580-1364	LIL NOVO BEAN STEP	3	1	3	28	84



COLOR SELECTION LIST | Default Color Option

GROUP 1 (Freestanding)

Post: Navy
Panel: Blue-White-Blue
Deck: Blue
Plastic: Granite
Acc: Lime
Flat: Blue
PSteel: Blue

GROUP 2 (2-5 Structure)

Deck: Gray
Post: Navy
Acc: Lime
Panel: Blue-White-Blue
Flat: Blue
Plastic: Granite

GROUP 3 (Momvnt)

Post: Navy
Panel: Blue-White-Blue
Plastic: Granite
Acc: Lime

GROUP 4 (5-12 Structure)

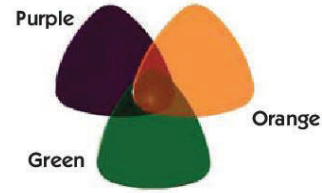
Deck: Blue
Post: Navy
Acc: Lime
Flat: Blue
Panel: Blue-White-Blue
Plastic: Granite

COLORS THAT MOVE YOU

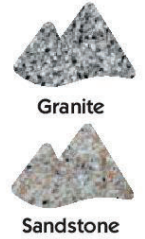
POWDER COAT PAINT



SOLIS HUE TOPPERS



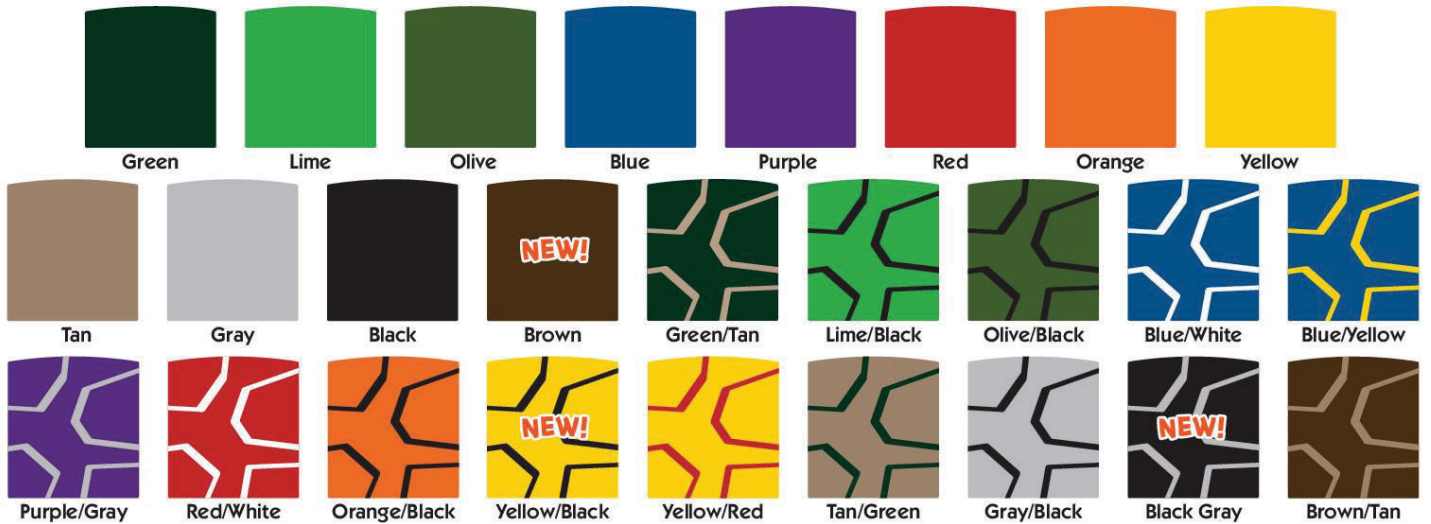
ROCKIT CLIMBERS



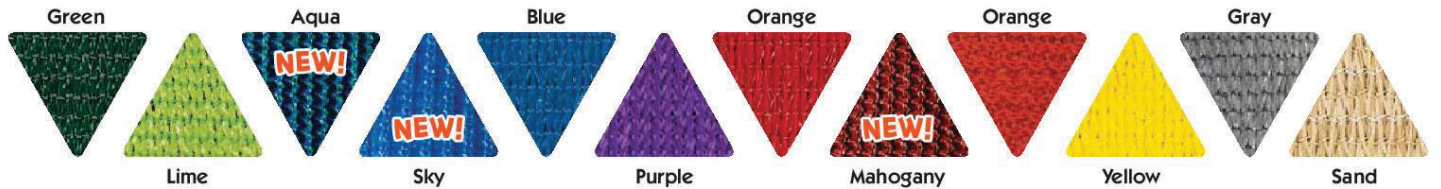
PLATFORMS



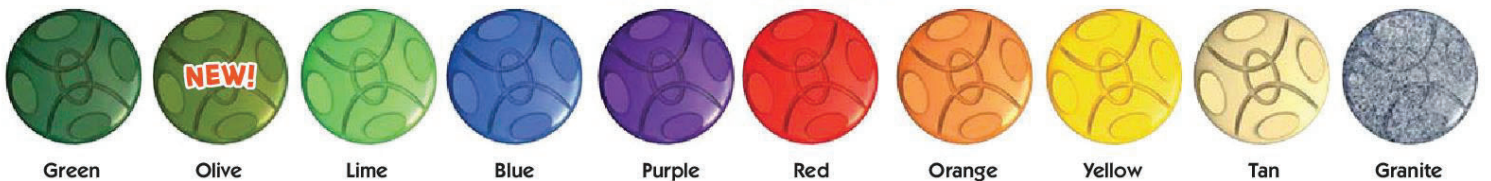
HDPE PLASTIC PANELS



SHADE CANOPIES



ROTOMOLD PLASTIC



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Konnection Swing™

Safety Standards & Guidelines - Reference Information

The Konnection Swing was designed to provide an intergenerational play opportunity and offer everyone the childhood joy of swinging! While researching the use of swings, two trends stood out to us - caregivers pushing infants in bucket seat swings and adults swinging with children on their lap. Both situations could be improved with the design of a swing designed to foster connection and increase safety. The Konnection Swing was developed as a direct result of this. The overall design is focused on fostering true connection in both eye contact and proximity leading to increased engagement for all users. Hands-free swinging allows the caregiver to hold, interact and play with the child as they both experience the thrill of swinging together.

The Konnection Swing is IPEMA Certified and meets or exceeds the requirements of ASTM F1487-17, which is recognized as the standard of care in the playground industry. This ASTM public playground safety standard is revised every two to three years to remain current with innovation and market trends.

The CPSC Public Playground Safety Handbook hasn't been revised since 2008 and doesn't include new product categories that have been innovated in recent years. There are a couple of points to note when deciding to purchase a multi-user swing:

- Multi-user swings are innovative and CPSC Public Playground Safety Handbook doesn't have a standard that specifically covers them.
- CPSC 5.3.8.3.1 – CPSC recommends that belt swing seats should be designed to accommodate no more than one user at any time. While the Konnection Swing is a single axis swing, it is clearly not a belt seat.
- CPSC 2.3.1 – CPSC says that swings intended for more than one user are not recommended because their greater mass, as compared to single occupancy swings, presents a risk of impact injury.
- The ASTM safety standard, F1487, was revised in 2011 to add maximum impact requirements for swings and the Konnection Swing has been tested and is compliant with ASTM impact requirements.
- CPSC has written a letter stating that “the swing impact test in F1487-11 is a reasonable approach to address the concerns posed by unoccupied, heavy, multiple occupancy swings.”
- CPSC has always included an exemption to both recommendations listed above for tire swings, which are multiple occupancy swings that are suspended from a single pivot and permit swinging in any direction.
- CPSC also emphasizes that their Handbook provides recommendations, not requirements. If a jurisdiction adopts the Handbook's recommendations as mandatory requirements, that jurisdiction would need to determine how the requirements should be applied in any particular instance.

EXHIBIT B

BURKE GENERATIONS WARRANTY®**The Longest and Strongest warranty in the industry**

BCI Burke Company, LLC ("Burke") warrants that all standard products are warranted to be free from defects in materials and workmanship, under normal use and service, for a period of one (1) year from the date of shipment.

We stand behind our products. In addition, the following products are warranted, under normal use and service from the date of shipment as follows:

- One Hundred (100) Year Limited Warranty on aluminum and steel upright posts (including Intensity®, Synergy™, Nucleus®, Voltage®, Little Buddies®, ELEVATE®, ACTIVATE®, INVIGORATE™) against structural failure due to corrosion, deterioration or workmanship.
- One Hundred (100) Year Limited Warranty on KoreKonnct® clamps against structural failure due to corrosion, deterioration or workmanship.
- One Hundred (100) Year Limited Warranty on Hardware (nuts, bolts, washers)
- One Hundred (100) Year Limited Warranty on bolt-through fastening and clamp systems (Synergy™, Intensity®, Nucleus®, Voltage®, Little Buddies®, ELEVATE®).
- Twenty-Five (25) Year Limited Warranty on spring assemblies and aluminum cast animals.
- Fifteen (15) Year Limited Warranty on structure platforms and decks, metal roofs, table tops, bench tops, railings and barriers against structural failure due to materials or workmanship.
- Fifteen (15) Year Limited Warranty on all plastic components including StoneBorders against structural failure due to materials or workmanship.
- Ten (10) Year Limited Warranty on ShadePlay Canopies fabric, threads, and cables against degradation, cracking or material breakdown resulting from ultra-violet exposure, natural deterioration or manufacturing defects. This warranty is limited to the design loads as stated in the specifications.
- Ten (10) Year Limited Warranty on NaturePlay® Boulders and GFRC products against structural failure due to natural deterioration or workmanship. Natural wear, which may occur with any concrete product with age, is excluded from this warranty
- Ten (10) Year Limited Warranty on Full Color Custom Signage against manufacturing defects that cause delamination or degradation of the sign. Full Color Custom Signs also carry a two (2) year warranty against premature fading of the print and graphics on the signs.
- Five (5) Year Limited Warranty on Intensity® and RopeVenture® cables and LEVEL X® flex bridge against premature wear due to natural deterioration or manufacturing defects. Determination of premature wear will be at the manufacturer's discretion.
- Five (5) Year Limited Warranty on moving parts, including swing components, against structural failure due to materials or workmanship.
- Five (5) Year Limited Warranty on PlayEnsemble® cables and mallets against defects in materials and workmanship.
- Three (3) Year Limited Warranty on electronic panel speakers, sound chips and circuit boards against electronic failure caused by manufacturing defects.

The warranty stated above is valid only if the equipment is erected in conformity with the layout plan and/or installation instructions furnished by BCI Burke Company, LLC using approved parts; have been maintained and inspected in accordance with BCI Burke Company, LLC instructions. Burke's liability and your exclusive remedy hereunder will be limited to repair or replacement of those parts found in Burke's reasonable judgment to be defective. Any claim made within the above stated warranty periods must be made promptly after discovery of the defect. A part is covered only for the original warranty period of the applicable part. Replacement parts carry the applicable warranty from the date of shipment of the replacement from Burke. After the expiration of the warranty period, you must pay for all parts, transportation and service charges.

Burke reserves the right to accept or reject any claim in whole or in part. Burke will not accept the return of any product without its prior written approval. Burke will assume transportation charges for shipment of the returned product if it is returned in strict compliance with Burke's written instructions.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IF THE FOREGOING DISCLAIMER OF ADDITIONAL WARRANTIES IS NOT GIVEN FULL FORCE AND EFFECT, ANY RESULTING ADDITIONAL WARRANTY SHALL BE LIMITED IN DURATION TO THE EXPRESS WARRANTIES AND BE OTHERWISE SUBJECT TO AND LIMITED BY THE TERMS OF BURKE'S PRODUCT WARRANTY. SOME STATES DO NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

Warranty Exclusions: The above stated warranties do not cover: "cosmetic" defects, such as scratches, dents, marring, or fading; damage due to incorrect installation, vandalism, misuse, accident, wear and tear from normal use, exposure to extreme weather; immersion in salt or chlorine water, unauthorized repair or modification, abnormal use, lack of maintenance, or other cause not within Burke's control; and

Limitation of Remedies: Burke is not liable for consequential or incidental damages, including but not limited to labor costs or lost profits resulting from the use of or inability to use the products or from the products being incorporated in or becoming a component of any other product. If, after a reasonable number of repeated efforts, Burke is unable to repair or replace a defective or nonconforming product, Burke shall have the option to accept return of the product, or part thereof, if such does not substantially impair its value, and return the purchase price as the buyer's entire and exclusive remedy. Without limiting the generality of the foregoing, Burke will not be responsible for labor costs involved in the removal of products or the installation of replacement products. Some states do not allow the exclusion of incidental damages, so the above exclusion may not apply to you.

The environment near a saltwater coast can be extremely corrosive. Some corrosion and/or deterioration is considered "normal wear" in this environment. Product installed within 500 yards of a saltwater shoreline will only be covered for half the period of the standard product warranty, up to a maximum of five years, for defects caused by corrosion. Products installed in direct contact with saltwater or that are subjected to salt spray are not covered by the standard warranty for any defects caused by corrosion.

Contact your local Burke Representative for warranty information regarding Burke Turf® and Burke Tile products.

Terms of Sale

Pricing: Prices published in this catalog are in USD, are approximate and do not include shipping & handling, surfacing, installation nor applicable taxes. All prices are subject to change without notice. Contact your Burke representative for current pricing. Payments are to be made in USD.

Weights: Weights are approximate and may vary with actual orders.

Installation: All equipment is shipped unassembled. For a list of factory-certified installers in your area, please contact your Burke representative.

Specifications: Product specifications in this catalog were correct at the time of publication. However, product improvements are ongoing at Burke, and we reserve the right to change or discontinue specifications without notice.

Loss or Damage in Transit: A signed bill of lading is our receipt from a carrier that our shipment to you was complete and in good condition upon arrival. Before you sign, please check the Bill of Lading carefully when the shipment arrives to make sure nothing is missing and there are no damages. Once the shipment leaves our plant, we are no longer responsible for any damage, loss or shortage.

For more information regarding the warranty, call Customer Service at 920-921-9220 or 1-800-356-2070.

01/2021