

**PURCHASE AGREEMENT
BY AND BETWEEN
THE CITY OF CARSON AND
RJ THOMAS MANUFACTURING COMPANY, INC.**

THIS PURCHASE AGREEMENT ("Agreement") is executed this ____ day of _____, 2023 ("Effective Date"), by and between the CITY OF CARSON, a California municipal corporation ("City"), and RJ THOMAS MANUFACTURING COMPANY, INC., an Iowa corporation ("Seller"). City and Seller may be referred to, sometimes individually or collectively, as "Party" or "Parties."

1. Purchase and Sale of Goods. On and subject to the terms and conditions set forth in this Agreement, Seller agrees to sell and deliver to City and City agrees to purchase and accept from Seller the park benches and related ancillary services described herein and specified in Exhibit A, attached hereto and incorporated herein by this reference ("Goods"), for the total purchase price ("Purchase Price") set forth in Section 3.

2. Description of Goods. The Goods being sold by Seller to City consists of 32 park benches, together with ancillary shipping, delivery, and warranty services detailed in Exhibit A (services shall hereinafter be referred to as "Services"). Offloading and installation of the Goods will be handled by the City.

3. Purchase Price. The total Purchase Price which City agrees to pay to Seller for purchase and sale of the Goods and their delivery, inclusive of all applicable sales tax and shipping & delivery fees, is not to exceed **Forty Thousand Eighty-Three Dollars and Twenty Cents (\$40,083.20)**, as provided in further detail in Exhibit A.

4. Term. The term of this Agreement shall expire after City's acceptance of the Goods and City's payment therefor following Seller's submission of the requisite invoice, and subject to any applicable warranty of the Goods.

5. Representations and Warranties of Seller. Seller makes the following representations and warranties to City:

5.1. Authority and Consents. Seller has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement. No approvals or consents of any persons are necessary in connection with Seller's execution, delivery, and performance of this Agreement, except for such as have been obtained on or prior to the date hereof. The execution, delivery, and performance of this Agreement by Seller have been duly authorized by all necessary action on the part of Seller and constitute the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms.

5.2. Title and Operating Condition. Seller has good and marketable title to the Goods. The Goods are free and clear of any restrictions on or conditions to transfer or

assignment, and City will acquire absolute title to the Goods free and clear of mortgages, liens, pledges, charges, encumbrances, equities, claims, covenants, conditions and restrictions except for such as may be created or granted by City. The Goods are in conformity with the manufacturer's specifications, descriptions, representations and warranties. Seller is aware that City is purchasing the Goods for use in City's operations and that City is relying on Seller's warranties that the Goods are fit for this purpose and the ordinary purposes for which the Goods are normally used.

6. Time of Delivery. The date and time of delivery of the Goods shall be no later than 55 days following issuance of a Notice to Proceed by City's Contract Officer, or as otherwise requested by the City, during City's business hours which are Monday through Thursday 7:00 am to 3:30 pm. City will provide Seller with a scheduled delivery date for the site listed in Section 7.

7. Place of Delivery. The Goods shall be delivered to City of Carson, Corporate Yard Receiving Warehouse, 18620 S. Broadway, Building B, Carson, CA 90745.

8. Title and Risk of Loss; Payment and Invoicing. Title to and the risk of loss, damage and destruction of the Goods shall remain with the Seller until after inspection and acceptance of the Goods by City, and payment by City of the Purchase Price. Seller shall invoice City in the amount of the Purchase Price for purchase of the Goods, and City shall remit payment by no later than forty-five (45) days after City's acceptance of the Goods.

9. Inspection. After delivery of the Goods, City shall inspect the Goods within a reasonable time not to exceed thirty (30) days and provide written notice to the Seller specifying any defects or other objections, unless City intends to accept the Goods in whole, in which case no notice will be necessary. Acceptance of the Goods, whether in whole or in part, shall not be deemed a waiver of any defects identified by the City, nor any defects later discovered by the City, and specified to the Seller in writing.

10. No Replacements or Cures. This Agreement calls for strict compliance. Seller expressly agrees that both the Goods tendered and the tender itself will conform fully to the terms and conditions of the Agreement on the original tender. In the event of rejection by City of the whole of the Goods or any part thereof, City may, but is not required to, accept any substitute performance from Seller or engage in subsequent efforts to effect a cure of the original tender by Seller.

11. Insurance Coverages.

11.1 Types of Coverages. Seller shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Commercial General Liability Insurance (Coverage Form ISO CGL CG 00 01 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of

insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, then the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for Seller against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Seller in the course of carrying out the work or services contemplated in this Agreement, with Employer's Liability insurance coverage limits of at least \$1,000,000.00.

(c) Automotive Insurance (Coverage Form CA 00 01 including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence basis for bodily injury and property damage in an amount not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased, hired cars, and any other automobile.

(d) Subcontractors. Seller shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

(e) Broader Coverages and Higher Limits. Notwithstanding anything else herein to the contrary, if Seller maintains broader coverages and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverages and/or higher limits maintained by Seller.

11.2 General Insurance Requirements. All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents may apply in excess of, and not contribute with Seller's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. The insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, Seller shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the Contract Officer. No work or services under this Agreement shall commence until Seller has provided the City with Certificates of Insurance, additional insured endorsement forms or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of and endorsements to all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City. The insurance

required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A-" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City's Risk Manager or other designee of the City due to unique circumstances.

12. Indemnification. Seller agrees to defend, indemnify, protect and hold harmless the City, its officers, officials, employees, agents and volunteers from and against any and all claims, demands, losses, damages, costs and liability of any kind or nature (including reasonable attorney's fees) which the City, its officers, officials, employees, agents or volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property (i) arising out of or from the Goods or delivery of the Goods or from performance of the Services, and (ii) to the extent arising from (a) Seller's negligent acts, omissions or willful misconduct, (b) Seller's ownership or possession of the Goods during any period ending on or prior to the Effective Date, (c) Seller's replacement of the Goods or any part thereof pursuant to this Agreement, (d) Seller's failure to comply with any laws imposed on Seller during Seller's ownership or possession of the Goods during any period ending on or prior to the Effective Date, including but not limited to, failure to place any required warning labels on the Goods, and (e) Seller's breach of any of its representations, warranties or covenants under this Agreement.

13. Remedies. The remedies and rights conferred on the City by this Agreement are in addition to and cumulative with all other remedies and rights accorded the City under law or equity. Without limiting the generality of the foregoing, Seller agrees that if there is any defect in the Goods, as determined in City's sole and absolute discretion, and upon written notice thereof given to Seller, Seller shall replace the defective Goods without delay or cost to the City. In the event of Seller's failure to replace the Goods within ten (10) calendar days after being notified of such defects, City is hereby authorized to contract with another party for the purchase of replacement of Goods, and Seller shall reimburse City for all such costs immediately upon demand.

14. Survival of Representations and Warranties. All representations, warranties, covenants and agreements of the Parties contained in this Agreement shall survive the execution, delivery and performance of this Agreement.

15. Assignment. This Agreement may not be assigned by Seller without the express written consent of City. This Agreement shall be binding on, and shall inure to the benefit of, the Parties to it and their respective heirs, legal representatives, successors and assigns. All Goods manufacturer's warranties shall be assigned to and turned over to the City.

16. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the Parties that all other provisions of this Agreement be construed to remain fully valid, enforceable, and binding on the Parties.

17. Entire Agreement: Modification: Waiver. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and thereof and supersedes all prior and contemporaneous agreements, representations and understandings of the Parties,

whether oral or written. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the Parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

18. Contract Officer. Timothy Grierson, Recreation Superintendent, or such person as may be designated by the City Manager is hereby designated as being the representative of the City authorized to act on its behalf with respect to this Agreement and to make all decisions in connection therewith ("Contract Officer").

19. Notices. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the Party to whom notice is to be given, or on the third day after mailing if mailed to the Party to whom notice is to be given, by first class mail, registered or certified, postage prepaid, and properly addressed as follows:

To Seller at: RJ Thomas Manufacturing Company, Inc.
5648 US-59
Cherokee, IA 51012
Attn: Adam Struck

To City at: City of Carson
701 East Carson Street
Carson, CA 90745
Attn: City Manager

Any Party may change its address for purposes of this paragraph by giving the other Party written notice of the new address in the manner set forth above.

20. Effects of Headings. The subject headings of the sections and subsections of this Agreement are included for convenience only and shall not affect or be considered in the construction or interpretation of any of its provisions.

21. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile and electronic signatures shall be deemed the same as original signatures.

22. Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California as applied to contracts that are executed and performed entirely in California.

23. Termination. City may terminate this Agreement for any reason whatsoever, prior to delivery of the Goods and City's payment of the Purchase Price therefor as set forth herein.

24. Venue. All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in Los Angeles County, California.

25. Exhibit A. The Parties acknowledge and understand that Exhibit A is strictly intended to set forth the particulars that will comprise the Goods, Services and associated pricing, and that any text contained in Exhibit A that may otherwise be construed to be of legal significance (“Extraneous Text”) will be disregarded by the Parties. Additionally, in the event either Party or any court of competent jurisdiction takes the position that any Extraneous Text is not to be disregarded and in fact ought to be made part of this Agreement, to the extent of any conflict between this Agreement minus Exhibit A on the one hand, and Exhibit A on the other hand, the former shall prevail.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties to this Agreement have duly executed it on the day and year first above written.

CITY:

CITY OF CARSON, a municipal corporation

Lula Davis-Holmes, Mayor

ATTEST:

Dr. Khaleah K. Bradshaw, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
[brj]

SELLER:

RJ THOMAS MANUFACTURING COMPANY,
INC., an Iowa corporation

Name:
Title:

Name:
Title:

Two corporate officer signatures required when Seller is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. SELLER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO SELLER'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2023 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☐

INDIVIDUAL

☐

CORPORATE OFFICER

TITLE(S)

☐

PARTNER(S)

☐

LIMITED

☐

GENERAL

☐

ATTORNEY-IN-FACT

☐

TRUSTEE(S)

☐

GUARDIAN/CONSERVATOR

☐

OTHER _____

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

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☐

PARTNER(S)

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GENERAL

☐

ATTORNEY-IN-FACT

☐

TRUSTEE(S)

☐

GUARDIAN/CONSERVATOR

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SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT A

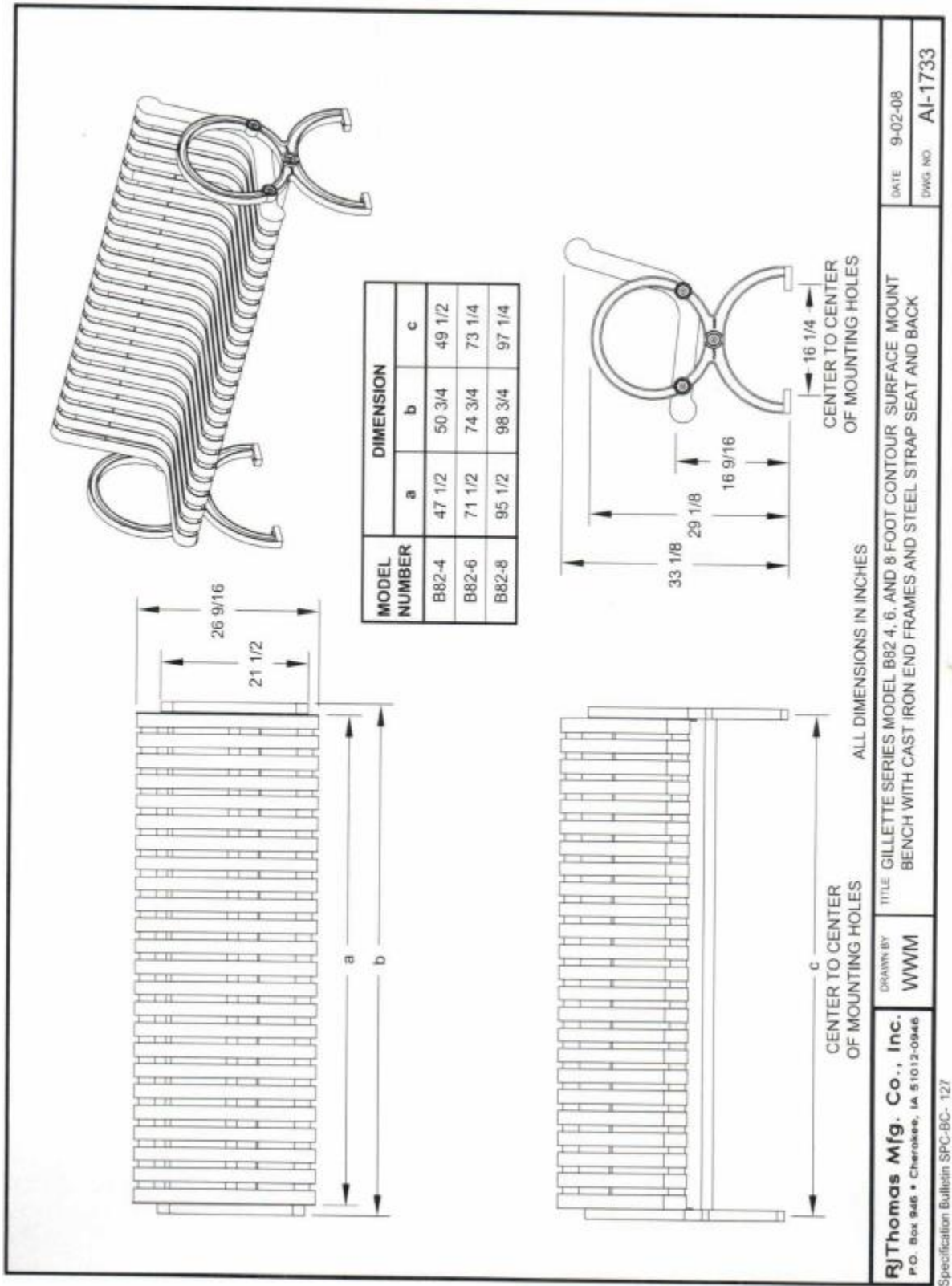
DESCRIPTION OF GOODS, SERVICES AND PRICING

I. The Goods include 32 park benches with the specifications set forth below. Shipping and delivery of the Goods will be provided by Seller in accordance with Sections 6 and 7 of the Agreement. The Goods will be shipped/delivered fully assembled. Offloading of the Goods following delivery, and installation/anchoring of the park benches into their City sites (as will be selected by City), will be handled by City.

Specifications:

Pilot Rock brand 4 ft. Gillette Bench, Model B82/CB-4SS, Contour Surface Mount. The seat slats are 1/8" x 2", welded to a 2-3/8" dia. x .120 in. wall steel tubes with 7 GA end plates. The horizontal support brace is 1.9" OD x 11 GA wall steel pipe. The bench includes heavy cast iron end frames. The bench will be powder coated black. Anchor screws are 3/8" x 3". Seat material is heavy gauge steel strap (SS) fabrication with all steel component support structure, all welded construction, with powder coat paint finish. See below for further specs, as applicable to the 4 ft. length (B82-4 model number).

- Model B82 series end frames are a one-piece molded cast iron construction with a circular armrest incorporated into the design.
- Frames are supported by a horizontal brace of 1.9" O.D. x 11 ga. wall steel pipe.
- Bench is designed to be permanently surface mounted using 9/16" dia. holes provided in each leg foot for use with anchors.
- Model B82-4 is a nom. 4 ft. in length.
- Contour seat is a one piece welded assembly made of 2" wide by 1/8" thick steel straps welded to 2-3/8" dia/ x .120 in. wall steel tubes and 7 ga. end plates. Straps are wrapped around tubes to form a smooth curved outer edge of seat.
- All steel and cast iron components are finished in black powder coat (indicated by /CB in model no.).
- Seat is finished in black powder coat (indicated by /CB in model no.).
- All fasteners are provided for assembly.



II. The Goods are covered by a one-year warranty of Seller for the black powder coat on the frame and five-year warranties of Seller for the thermo-plastic coating on the steel strap seat and for the park bench frame, as detailed in the “one year” and “five years” rows of the following table (handwritten markups are not limiting):

PRODUCT WARRANTY

TERM	PRODUCT	OTHER INFORMATION	REQUIREMENTS	EXCLUSIONS
LIFETIME	Picnic Table Frames: UT, UTH, XT, XTH, WXT, WXTH	Original Owner Only	All products must: 1) be assembled and installed according to manufacturer's specifications and instructions. 2) be properly maintained 3) not have been altered by the addition or deletion of parts, or modified in any other manner.	Vandalism. Damage caused by incorrect assembly, installation, application (use), or negligence. Natural or manmade disasters. Cosmetic changes due to weathering - including paint fading, discoloration of wood, or color fading or spotting of coated steel and recycled plastic products caused by exposure to natural elements or chemicals. Scratches, dents, or marring caused by normal use and public exposure. Seasons checks, twisting, or splintering of wood caused by climatic differences or lack of proper maintenance. Loss or damage in transit while product is responsibility of carrier. High heat paint subject to overly built fires. Steel warpage caused by fires of excessive size or duration Premature rust-through of grill boxes due to improper cleaning or maintenance, and fire rings buried in the ground. Premature rusting or discoloring caused by corrosive environment or while in ocean transit. Damage caused by animals or wildlife.
ONE YEAR	Powder Coat, Enamel, & High Heat Paints; Lumber; Trash & Recycling Lids & Liners; Plaques; Decals; Resin Fill; Umbrellas; Pet Waste Stations; FSW Swivel Grate	No Warranty on Lumber shipped outside the United States. Water Repellant recommended on Lumber.		
FIVE YEARS	Thermo-Plastic Coating	Limited and Prorated Warranty on coating material against defects when subjected to normal use and proper maintenance.		
	Picnic Table Frames (those not included in Lifetime Warranty), Park Bench Frames, Steel and Aluminum Bench and Table seat/top Structures, Recycled Plastic Components, Bike Racks, TRH and TRQ Frames, Steel Trash Receptacle and Planter Structures, Pedestal Mounts, Tissue Holders, all Grills, Hot Coal Bin, Utility Tables, Campfire Rings, Lantern Holders, Food Lockers, Kolor Cans.	Recycled Plastic warranty applies only to components that have been cut, drilled, or routed by the manufacturer. This warranty does NOT cover plastic purchased in raw stock form by customer and cut, drilled, or routed by customer for custom application. Recycled Plastic and Thermo-Plastic coated components include a UV stabilizer to retard effects of natural exposure. We cannot warrant "fading" or surface "contamination" due to extreme variations in levels of exposure and in the definition of "fading".		
FIFTY YEARS	Recycled Plastic	Material decomposition only.		

III. The pricing line item detail for the Goods and Services is as follows:

- A.** Bench Unit Cost: \$1,025.10. Total for 32 benches: \$32,803.20
- B.** Anchor Set Unit Cost: \$9. Total for 32 sets: \$288
- C.** Freight total: \$3,600
- D.** Sales tax: \$3,392