

**AN ORDINANCE** approving the purchase of one Portland Loo unit as a sole source acquisition between the City of Fort Wayne Community Development Division and MADDEN FABRICATION and enter into a contract for installation.

**WHEREAS**, the City of Fort Wayne recognizes the need for enhanced public restroom facilities in the downtown area to improve public health, safety and convenience; and

**WHEREAS**, the Portland Loo, manufactured by Madden Fabrication, is uniquely designed to meet these needs, offering features such as graffiti-proof surfaces, an open-grate design to deter criminal activities, and ease of maintenance; and

**WHEREAS**, Madden Fabrication is the sole fabricator and distributor of the Portland Loo, making it a sole source acquisition for this specific product; and

**WHEREAS**, due to impending increases in steel tariffs, the cost of acquiring a Portland Loo is expected to rise in the near future, necessitating immediate action to secure current pricing;

**NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:**

**Section 1.** The City of Fort Wayne hereby authorizes the purchase of one (1) Portland Loo unit from Madden Fabrication on a sole source basis, without the need for competitive bidding, due to the unique specifications and single-source manufacture of the product at a price of \$170,510.00

**Section 2.** The City of Fort Wayne hereby authorizes the Community Development Division to enter in to a competitively bid contract for the installation of one Portland Loo unit not to exceed \$109,490.00.

**Section 3.** The total expenditure for the purchase and installation shall not exceed \$280,000.00 subject to appropriation by the City Council.

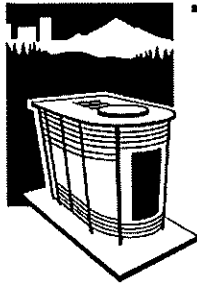
1                   **Section 4.** The Mayor or her designee is authorized to execute all  
2 necessary documents and agreements related to this purchase, subject to the  
3 review and approval of the City Attorney.

4                   **Section 5.** This ordinance shall be in full force and effect from and after its  
5 passage and any and all necessary approval by the Mayor.

6  
7 \_\_\_\_\_  
Council Member

8 APPROVED AS TO FORM AND LEGALITY

9  
10 \_\_\_\_\_  
Malak Heiny, City Attorney



**The  
Portland  
Loo** | *A Unique Solution to  
a Universal Problem*

# QUOTE

**Date:** February 19, 2025  
**Invoice #:** [1440]  
**Customer ID:** Fort Wayne  
**Expires:** 3/19/2025

**To:** **Name:** Kelly Lundberg **Ship to:** Zip Code 46802  
**City:** Fort Wayne, IN

Salesperson	Shipping Method	Shipping Terms	Delivery Date	Payment Terms
Caleb Larsen	Freight	FOB Shipping Point	TBD	see attached
Item #	QTY	Description	Unit Price	Line Total
1	1	<u>Portland Loo:</u> Single occupant public toilet. 304 stainless steel posts, panels, louvers, roof and toilet. Aluminum front door. Skylight, 40W heat trace, interior & exterior LED lighting with photoeye and motion sensor control and occupancy counter. Incl. interior 32oz hand sanitizer dispenser and lockable 2-roll toilet paper dispenser with <b>AC power</b> option. (LH/RH door swing and hand wash basin to be determined later)	\$146,000.00	\$146,000.00
2	1	Loo Template	incl	\$0.00
3	1	Foundation Mounting Hardware	incl	\$0.00
4	1	As Built Drawings	\$750.00	\$750.00
5	1	Engineered Drawings	\$1,700.00	\$1,700.00
6	1	<u>Add</u> Baby Changing Table	\$2,140.00	\$2,140.00
7	1	<u>Add</u> Sharps Container	\$1,800.00	\$1,800.00
8	1	<u>Add</u> Cold Weather Toilet Upgrade	\$5,200.00	\$5,200.00
9	1	<u>Add</u> Recessed Hand Wash With Cold Air Hand Dryer, Tempered Water, and Soap Dispenser.	\$7,100.00	\$7,100.00
10	1	Shipping & Handling	\$5,820.00	\$5,820.00
<b>Total</b>				<b>\$170,510.00</b>

Make all checks payable to Madden Fabrication  
 Thank you for your business!

2550 NW 25th Pl. Portland, Oregon 97210 (503)226-3968

Proposal good for 30 days. Madden reserves the right to pass on any material price escalation beyond 30 days.

TERMS AND CONDITIONS FOR MADDEN FABRICATION  
(PORTLAND LOO)

1. As used herein, "Agreement" refers to these Terms and Conditions and accompanying Standard Exclusions and Proposal, collectively; and "Madden" or "Madden Fabrication" means Madden Fabrication, Inc. The accompanying Proposal and Standard Exclusions and these Terms and Conditions comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Fulfillment of Customer's order does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms and Conditions.
2. The terms set forth in this Agreement are the sole terms for the sale of goods and services ("Goods", "Portland Loo" and "Services") by Madden Fabrication, unless otherwise specifically provided for by Madden Fabrication in this document and shall apply to the exclusion of any inconsistent or additional terms contained in the Customer's order or acknowledgment or otherwise proposed by Customer. Customer's acceptance of these terms shall be conclusively presumed by Customer's request for delivery of Goods and Services, or by Customer's acceptance of delivery of, or payment for, the Goods and Services.
3. Madden Fabrication may, but shall not be obligated to, grant credit terms to Customer. Madden Fabrication reserves the right to refuse or cancel any order without liability if Madden Fabrication deems Customer unable to pay for any Goods or Services. Madden Fabrication reserves the right, in its sole discretion and without prior notice, to deny, change or limit the amount or duration of credit to be allowed Customer, either generally or with respect to a particular order. Customer hereby authorizes Madden Fabrication to apply any payment made by or on behalf of Customer to any account or accounts then outstanding between Customer and Madden Fabrication and Customer hereby waives any right to require any application of such payment to a particular account.
4. All shipments of Goods will be transported to Customer's designated address. Customer agrees that Customer is responsible for unloading the Goods.
5. Unless otherwise specified in Madden Fabrication's Proposal, Madden Fabrication may ship the Goods at any time after the Goods are ready for shipment. Further, Customer agrees to accept the Goods when delivered to Customer.
6. If Customer delays shipment, regardless of the reason for delay, Customer shall pay Madden Fabrication (a) for storage, drayage, shipping and any other costs incurred due to Customer's delay plus reasonable overhead and profit as determined by Madden Fabrication; (b) the remaining balance of the purchase price; and (c) \$2,500 per month storage fee for each Portland Loo each month that delivery is delayed. Any of Customer's costs, damages or difficulties arising from the Customer's delay in shipment or receipt of the Goods are Customer's responsibility.

7. Madden Fabrication makes and sells the Portland Loo under license from the City of Portland, Oregon. Customer's purchase of the Portland Loo shall not transfer any intellectual property rights related to the Portland Loo, including but not limited to licenses, patent rights, copyrights, moral rights, trademark rights, trade name rights, service mark rights, trade dress rights, trade secret rights, proprietary rights, privacy rights, and publicity rights, whether or not those rights have been filed or registered under any statute or are protected or protectable under applicable law. All such intellectual property rights are reserved by the City of Portland and Madden Fabrication (as licensee). Customer shall have no right to make copies of the Portland Loo, or to sublicense or otherwise commercially use any intellectual property right related to the Portland Loo, including but not limited to the "Portland Loo" name.
8. Madden Fabrication may agree to make changes in the Goods or Services, or both. However, Madden Fabrication will not be required to proceed with such changes until Madden Fabrication and Customer agree on a price adjustment. No changes shall be made to the Goods or Services, or both, without Madden Fabrication's consent.
9. The Goods will be delivered within a reasonable time after the receipt of Customer's order, subject to delays permitted under this Agreement. Where required by applicable law, Madden Fabrication will calculate, collect, and remit applicable national, state, or local sales and use taxes, goods, and services taxes (GST), or value added taxes (VAT) to the applicable Government or Government Agency on the sale or delivery of Goods or Services within that specific jurisdiction. In the absence of such calculation, collection, and remittance requirement by applicable law, Customer shall pay all applicable national, state, or local sales and use taxes, goods, and services taxes (GST), or value added taxes (VAT) to the applicable Government or Government Agency on the sale or delivery of Goods or Services within that specific jurisdiction.
10. Customer shall ensure that all unloading and handling of the Goods complies with the following: (a) All Goods (including but not limited to the Portland Loo), whether palletized or separated from a pallet, must be handled in accordance with the Portland Loo Installation Procedures; (b) all material received from, but not manufactured by Madden Fabrication, must be handled in accordance with the handling instructions of the manufacturer of the material; and (c) use of proper handling equipment and its supply and operation are strictly the responsibility of Customer. Failure to properly unload and handle the Goods (including but not limited to the Portland Loo), voids Madden Fabrication's warranties hereunder.
11. Unless accepted by Customer, Madden Fabrication's Proposal will expire and shall be of no effect thirty (30) days after the Customer receives the Proposal. Madden Fabrication reserves the right to pass on any material price escalation to Customer beyond the thirty (30) day period.
12. Madden Fabrication will invoice Customer as follows: Thirty percent (30%) at the time of receipt of Customer's acceptance of Madden Fabrication's Proposal; fifty percent (50%) when the Goods are ready for shipment; and twenty percent (20%) after the Goods

have left Madden Fabrication's facility in Portland, Oregon. Customer must make payments no later than thirty (30) days from the billing date specified on each invoice. Time is of the essence of Customer's performance of its payment obligations, and Customer's failure to remit payment in full within thirty (30) days of the billing date specified on the invoice shall constitute a material breach of this Agreement. Madden Fabrication does not accept partial payments, any offsets, credit card merchant fees and/or retainage against the purchase price.

13. Customer agrees that any late payment is subject to a late fee of 1.5% per month (18% per annum). If a late fee is assessed, it must be paid together with all delinquent amounts, at Madden Fabrication's option, in order to maintain an open account with Madden Fabrication. If Customer fails to make payment as set forth herein, Madden Fabrication shall not be obligated to make any further deliveries to Customer, may elect at any time to cancel all or part of any order, and proceed to enforce all legal rights and remedies for collection of any delinquent amount.
14. If Madden Fabrication considers itself insecure with respect to Customer's performance of its obligations under this Agreement, Madden Fabrication shall have and may exercise all remedies available to it under law and at equity and may, at its option, declare all sums then unpaid immediately due and payable. Customer agrees that Madden Fabrication may file a construction, mechanic's or labor lien, payment bond claim, or other claim or action to enforce Madden Fabrication's right to payment. If Madden Fabrication files a lien or claim, Customer agrees to pay all costs necessary to satisfy and discharge the lien or claim, including, without limitation, attorney fees, filing fees, and costs. If Madden Fabrication incurs collection costs or attorney fees due to failure of Customer to pay when due or timely perform any obligation, Customer shall pay, immediately on demand, Madden Fabrication's costs, reasonable attorney fees, collection costs, and all expenses incurred by Madden Fabrication in collection of sums due, even though no suit or action is filed.

**15. Disclaimer of Warranty:**

**a. MADDEN FABRICATION WARRANTS SOLELY THAT IT WILL PROVIDE GOODS AND/OR SERVICES IN CONFORMANCE WITH THIS AGREEMENT AND SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES WITH REGARD TO SUCH GOODS AND/OR SERVICES PROVIDED BY MADDEN FABRICATION. CUSTOMER ACKNOWLEDGES THAT CUSTOMER IS NOT RELYING ON MADDEN FABRICATION IN ANY WAY FOR DESIGN OR ENGINEERING WITH RESPECT TO THE GOODS AND/OR SERVICES.**

**b. CUSTOMER ACKNOWLEDGES THAT ANY WARRANTY FOR PRODUCTS OR GOODS ACQUIRED BY MADDEN FABRICATION THROUGH A THIRD PARTY MANUFACTURER IS LIMITED TO THE WARRANTY PROVIDED BY THE MANUFACTURER OF THE PRODUCTS OR GOODS ACQUIRED. CUSTOMER AGREES THAT ALL CLAIMS BY CUSTOMER WITH RESPECT**

**TO THE CONDITION OR PERFORMANCE OF SUCH PRODUCTS OR GOODS SHALL BE MADE DIRECTLY BY CUSTOMER AGAINST SUCH MANUFACTURERS. MADDEN FABRICATION HEREBY DISCLAIMS ALL WARRANTIES WITH REGARDS TO SUCH PRODUCTS OR GOODS. IN THE EVENT THAT CUSTOMER HAS SUCH A CLAIM, CUSTOMER SHALL CONTACT MANUFACTURER DIRECTLY.**

**c. NOTWITHSTANDING ANY OTHER PROVISION IN THIS DOCUMENT, MADDEN FABRICATION EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

16. Madden Fabrication shall not be liable for correcting or replacing any nonconforming or defective Goods or Services unless Customer promptly notifies Madden Fabrication of the nonconformity or defect. Madden Fabrication shall not be liable for any special, direct, indirect or consequential damages cause by reason of said Goods' or Services' failure, defect or nonconformity. Any claim for nonconforming or defective Goods or Services shall be deemed waived and released by Customer unless a claim is asserted against Madden Fabrication within one (1) year after the date of delivery. Madden Fabrication shall have a reasonable opportunity to investigate all claims. Madden Fabrication reserves the right to correct any defects by either repair or replacement. Unless Madden elects to correct defects by repair or replacement, it is expressly understood that Madden Fabrication's sole obligation and Customer's sole remedy for any claimed defects is returning the purchase price paid by Customer for any defective Goods or Services.
17. Madden Fabrication shall not be liable for delays in performance and/or delivery from any cause beyond Madden Fabrication's control, including but not limited to, acts of God, governmental actions, terrorist acts, utility interruptions, strikes, riots, fires, war, assertions by third parties of infringement claims, pandemics, epidemics, late or non-delivery by suppliers to Madden Fabrication, and all other contingencies beyond the reasonable control of Madden Fabrication.
18. **TO THE FULLEST EXTENT PERMITTED BY LAW, CUSTOMER AGREES THAT UNDER NO CIRCUMSTANCES WHATSOEVER SHALL MADDEN FABRICATION BE LIABLE FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE AND WHETHER ARISING OUT OF BREACH OF WARRANTY, BREACH OF CONTRACT, STRICT LIABILITY IN TORT, NEGLIGENCE, MISREPRESENTATION, OR OTHERWISE.**
19. If any arbitration or litigation is instituted to interpret or enforce this Agreement, including any proceeding brought under the United States Bankruptcy Code, the prevailing party shall be entitled to recover as determined by the arbitrator or court, in addition to any other relief awarded: (a) the prevailing party's reasonable attorney fees

and all other fees, costs, and expenses of every kind incurred in connection with the arbitration or litigation or any appeal or petition for review; and (b) costs incurred in the collection of the award or the enforcement of the order. For purposes of this provision, the prevailing party is the party succeeding either affirmatively or defensively on the claim or claims, not limited to monetary claims, having the greatest value or importance as reasonably determined by the arbitrator or court.

20. This Agreement shall be construed and enforced in accordance with the laws of Oregon, with venue exclusively in Multnomah County. The parties hereby consent to the personal jurisdiction over them of the courts for the aforementioned jurisdiction (including any appeals courts), for any suit, action, or claim over which those courts have subject matter jurisdiction, and waive any objection to litigating in those courts based on lack of personal jurisdiction or forum *non conveniens*.
21. Customer acknowledges that Customer is not relying on Madden Fabrication in any way with respect to the suitability of the Goods or Services, or both. Customer agrees that Madden Fabrication is not responsible for obtaining any permits, licenses, regulatory approvals, system development charges, or other approvals or charges of the authority having jurisdiction over the installation of the Goods.
22. To the fullest extent permitted by law, Customer shall indemnify, defend, reimburse and hold Madden Fabrication and its officers, employees and agents harmless from, for and against all claims, liabilities, costs, penalties and expenses, including but not limited to attorneys' fees and expert witness' fees, arising out of or related to the Goods and Services, but only to the extent caused by Customer and Customer's designers, architects, engineers, contractors, consultants and any other person or entity for whom any of them is responsible.  
  
To the fullest extent permitted by law, Customer shall also indemnify, defend, reimburse and hold Madden Fabrication and its and its officers, employees and agents harmless from, for and against all claims, liabilities, costs, penalties and expenses, including but not limited to attorneys' fees and expert witness' fees, arising out of any claim of infringement of a patent, copyright, trademark, trade name, or other proprietary right, or claim of unfair trade or of unfair competition in connection with the manufacture, sale, or use of the Goods or Services, except to the extent that any claim, liability, or expense was caused by Madden Fabrication.
23. A party's failure or delay to insist upon or enforce strict performance of any provision of this Agreement or to exercise any right under it shall not constitute a waiver or relinquishment of the right.
24. Customer shall not assign its rights or delegate its duties under this Agreement in whole or in part without Madden Fabrication's prior written consent. Madden Fabrication may assign to any third party its rights and obligations with respect to Customer.



25. This Agreement binds the parties and their legal representatives, successors, and assigns. "Successor" includes any person or entity that by merger, purchase, or otherwise acquires substantially all the assets or business of a party, or a majority of its stock or shares.
26. If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal or unenforceable, the validity of the remaining provisions hereof shall not be affected thereby. Further, it is the intention of the parties that the court modify any illegal or unenforceable provision to the minimum extent necessary to make it consistent with applicable law and enforce the provision in its modified form.
27. This Agreement may be executed in counterparts, each of which shall be deemed an original, both or all of which together shall constitute one and the same instrument. A scanned or electronic signature on this Agreement shall have the same effect as an original signature.

MADDEN FABRICATION, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CUSTOMER: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Portland Loo Sole Source Letter

This letter serves to confirm that Madden Fabrication is the sole manufacturer and distributor of The Portland Loo®, a public restroom specifically designed to promote safety and deter crime using Crime Prevention Through Environmental Design (CPTED) principles.

The Portland Loo was originally designed by the City of Portland, Oregon, in collaboration with Madden Fabrication, to provide a durable, low-maintenance, and 24/7 accessible public restroom solution. The City of Portland holds an exclusive contract with Madden Fabrication, granting us the sole rights to manufacture and distribute The Portland Loo.

With its stainless-steel construction, patented vandal-resistant design, and modern aesthetics, The Portland Loo seamlessly integrates into urban environments while maintaining public safety. Its louvers for visibility, round door for durability, and compact footprint make it the ideal solution for cities looking to provide public restrooms without encouraging unwanted behavior.

As the exclusive provider of The Portland Loo, Madden Fabrication is the only authorized source for procurement, ensuring the highest quality standards and product integrity.

Evan Madden  
Company President  
1800 NW 169<sup>th</sup> Place  
Suite A200 Beaverton OR 97006  
P(503)226-4990  
C(503)481-9722  
Emadden@portlandloo.com  
[www.PortlandLoo.com](http://www.PortlandLoo.com)





# CITY OF FORT WAYNE

SHARON TUCKER, MAYOR

Community Development

## MEMO

**To:** City of Fort Wayne Common Council  
**From:** Kelly Lundberg, Deputy Director, 427-2158  
**Subject:** Approving the sole source purchase and installation of a Portland Loo  
**Date:** February 20, 2025

Community Development hereby requests Common Council approval for the purchase of one Portland Loo unit, manufactured by Madden Fabrication to secure the current pricing before potential increases due to impending steel tariffs. Additionally, we seek approval to enter into a competitively bid contract for the installation of the unit, with a total cost not to exceed \$109,490.

The Portland Loo, exclusively fabricated and distributed by Madden Fabrication, is designed for public use with unique features that enhance safety, reduce crime, and simplify maintenance:

- **Open Louvers:** Provides visibility to deter criminal activity.
- **No Sink:** Reduces misuse and maintenance costs.
- **Connection to Permanent Utilities:** Improves the overall user experience.
- **Durability and Ease of Cleaning:** Constructed with stainless steel for longevity and easy upkeep.

The innovative design of the Portland Loo effectively reduces crime in public restrooms. Its straightforward construction also leads to substantial savings in maintenance costs over time. No other restroom unit matches these particular attributes. Given the potential steel tariffs, there's a considerable risk of escalating material costs, particularly for stainless steel, which would impact the price of the Portland Loo. Buying now at the existing rate would safeguard against this financial risk. Additionally, securing a competitively bid contract for installation ensures responsible use of public funds while expediting project completion.

Please find attached the Digest Sheet summarizing the request.

Please feel free to contact me directly if you have any questions.

**Kelly Lundberg**

Deputy Director

O: 260.427.2158

[kelly.lundberg@cityoffortwayne.org](mailto:kelly.lundberg@cityoffortwayne.org)



## **DIGEST SHEET**

**TITLE OF RESOLUTION.** An Ordinance approving the purchase of one Portland Loo unit as a sole source acquisition between the City of Fort Wayne Community Development Division and Madden Fabrication.

**DEPARTMENT REQUESTING RESOLUTION.** Community Development

**SYNOPSIS OF RESOLUTION.** This ordinance authorizes the City of Fort Wayne to purchase one Portland Loo unit from Madden Fabrication as a sole source acquisition. The decision is driven by the need for improved public restroom facilities in the downtown area, which the Portland Loo uniquely addresses with its features like graffiti-resistant surfaces, open-grate design to prevent crime, and ease of maintenance. Given that Madden Fabrication is the only manufacturer of this specific product, competitive bidding is bypassed. Additionally, the urgency of the purchase is emphasized due to expected price increases from upcoming steel tariffs. The ordinance caps the expenditure at \$170,510.00, authorizes the Mayor or her designee to handle the execution of necessary documents, and sets the ordinance to take effect immediately upon passage and mayoral approval.

In addition to the purchase, this ordinance authorizes the City to enter into a competitively bid contract for the installation of the Portland Loo, with costs not to exceed \$109,490. This approach ensures fiscal responsibility while expediting the project's completion.

**EFFECT OF PASSAGE.** If passed, the Community Development division would be authorized to purchase one Portland Loo unit.

This acquisition will enhance downtown public health, safety, and convenience by providing a restroom facility that is resistant to graffiti, discourages crime through its open-grate design, and is easy to maintain. Moreover, by acting swiftly, the City secures the unit at the current price, avoiding anticipated cost increases due to steel tariffs, with purchase and installation expenditures not to exceed \$280,000.00.

**EFFECT OF NON-PASSAGE.** If the ordinance for the purchase of a Portland Loo unit from Madden Fabrication does not pass, Fort Wayne would miss the opportunity to immediately address the need for enhanced public restroom facilities in its downtown area. This could lead to continued or increased issues related to public health and safety, as well as inconvenience for residents and visitors. Additionally, not securing the purchase now would mean the city might have to pay more in the future due to anticipated increases in steel tariffs, thus missing out on current pricing.

**MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS).** \$280,000.00 of 2024 Supplemental LIT funds will be allocated for this project.

**ASSIGNED TO COMMITTEE (PRESIDENT).** \_\_\_\_\_